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GENERAL REPORT
OF THE
AIR COMPLIANCE REVIEW GROUP

January 1975

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The Air Compliance Program Review Group visited the ten regional offices, ten states, and seven local air pollution control agencies in the course of reviewing the Air Stationary Source Compliance program. An independent assessment was made as to the status of source compliance and the involvement of State and local programs in obtaining source compliance. This report includes about 90 recommendations to help solve problems which have been uncovered during the course of the review. Covered are: point source inventories, compliance schedule development, compliance monitoring, and enforcement actions. Also included are reviews of the program's point source compliance levels, resources, and general procedural-and-communications problems.

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I. EXECUTIVE SUMMARY

The Assistant Administrators for Planning and Management, Enforcement and General Counsel, and Air and Waste Management established the Air Compliance Program Review Group in May 1974. In the course of reviewing the Air Stationary Source Compliance program, the group visited the ten regional offices, ten States, and seven local air pollution control agencies. In addition, an independent assessment was made as to the status of source compliance and the involvement of State and local programs in obtaining source compliance. This report is one of the products of that review.

The present Air Compliance Program must be viewed within the context of the Clean Air Act Amendments of 1970, which set up extremely stringent guidelines for the development and implementation of air pollution control regulations. The Review Group assumes that EPA is going to continue to implement its many other programs, especially the new air programs, such as air quality maintenance. EPA's compliance program, being basically on track, will have to proceed within the constraints of its present resources, plus a possible limited increase. The issues addressed in this report, therefore, aim at making the program more efficient and more effective in view of the new demands for air resources that have been and will be placed on the regional offices.

The major conclusions of the Review Group are:

- Though much progress will have been made, the projected 94% program planning commitment for point source compliance at the end of FY 75 is unrealistically high. A more realistic, but still optimistic estimate, is 83.5%.

- Though the approach to air compliance is reasonable, significant improvements can be made in the implementation of the existing stationary source air compliance program:

  -- Inventories need to be expanded, updated, coordinated, and supported.

  -- Compliance schedule development must be completed and policy on post-mid-75 schedules finalized.

  -- Compliance monitoring programs must be expanded, clearly planned, and based on the Compliance Data System.

  -- Enforcement efforts must be based on a prioritized compliance strategy.

- State and local air pollution control agencies have made 81% of the point source compliance determinations, established 82% of the point source compliance schedules, and made 89% of the determinations of compliance with increments of progress under compliance schedules, according to the results of a survey by the Review Group. State and local agencies, however, have, in many instances, been slow in expanding their enforcement activities to the extent required to fully implement the SIP. Thus, according to State reported data, over 7,000 point sources require immediate action such as surveillance or enforcement by EPA or State or local agencies. Since the key to a successful national compliance program is enforcement oriented State and local programs, much of EPA's efforts in FY 75 and 76 must be aimed at encouraging the States to assume a larger role in this area.

- NAAQS in many AQCR's will not be achieved by the statutory deadlines. For total suspended particularlies" high urban background" and "fugitive dust," will keep levels in many urban areas above the standards. Reasonable control strategies may not be developable in all of these AQCRS. Appropriate legislative relief is necessary so EPA will not have to promulate socially or economically unacceptable controls strategies.

The report includes about 90 recommendations to help solve problems that have been uncovered during the course of the review. Some of the major findings and recommendations are summarized below.

FINDINGS AND RECOMMENDATIONS

The report is organized according to the basic elements of the air compliance effort: point source inventories, compliance schedule development, compliance monitoring, and enforcement actions. Also included are reviews of the program's point source compliance levels, resources, and general procedural-and-communications problems.

Point Source Inventories

- Present EPA inventories are inadequate; regions project that over 15% of the major point sources are not yet in the program planning and reporting system. We recommend that the regions develop a formal program to complete the initial indentification of point sources of air pollution and to see that all requisite source information is entered into the Compliance Data System (CDS), the National Emissions Data System (NEDS), and the Agency's Management-by-Objectives (MBO) system.

Compliance Schedule Development

- The key problem in this area is the approval of compliance schedules (enforcement orders) for sources that cannot meet the July 1, 1975 deadline. Where air quality standards will be violated, EPA cannot approve, anywhere in the country, State-initiated compliance schedules that have post-mid-75 completion dates. Where the standards will not be jeopardized, EPA can approve such schedules only in the nine states of the 9th circuit. Regions are either applying §113 orders to sources that need more time or allowing States to issue their own orders. These techniques may or may not stand up in court. While EPA does not have the resources to handle the post-mid-75 compliance schedule problems, the States (with the exception of nine western States) presently cannot legally have a role. This problem is now before Congress in the form of a legislative amendment. OEGC is also preparing explanatory regulations on this subject. We recommend its swift resolution since it is a source of major confusion in the regions.

  In addition, an enforcement order cannot take effect until the person to whom it is issued has had an opportunity for an enforcement conference with EPA concerning the alleged violalation. Citizens should have an opportunity to testify at these enforcement conferences if they make a request in writing beforehand. Accordingly, we recommend that public notice be given of all post-1975 §113 enforcement order compliance schedules and enforcement conferences. Further, we recommend that Headquarters develop guidelines for §113 actions to: (a) inform the public of how decisions are made under §113; and (b) subject the regions to an operating standard which will enable the product of a §113 proceeding to weather subsequent court challenge.

- One of the FY 74 program goals was to establish all requisite compliance schedules. Yet, more than 3,500 point sources still required compliance schedules at the start of FY 75. Normal lead times inherent in control equipment procurement will result in many of these sources being unable to meet the mid-75 attainment dates, even if they are expeditiously placed on compliance schedules. We recommend that each region negotiate a program to complete compliance schedule development with its States. The results of this negotiation should be a condition on the State program grant. Should a State remain incapable or uncooperative in submitting schedules to EPA, EPA should initiate selective EPA enforcement actions. If problems still remain, the region should initiate an effort to complete these schedules using contract funds available from OEGC.

Compliance Monitoring Program

- The Review Group found that most regions could not specify how they were going to identify or choose the sources they were going to inspect under their ongoing compliance monitoring program. We recommend that regions develop specific plans for their compliance monitoring program including increasing the amount of regional enforcement effort spent in the field and at State/local agencies. And, to assure implementation of the compliance monitoring program, it is recommended that regional Surveillance and Analysis (S&A) Divisions form air monitoring groups and assign clear responsibility to these groups for meeting the S&A Division's air commitments.

- The Compliance Data System's (CDS) master file includes 10,405 facilities, representing about 64% of the total number of point sources for which the regions have made program planning commitments. As of September 9, 1974, 38,371 (or 90%) of the increments of progress listed in CDS have not been updated by the regional offices to indicate whether or not the increments have been met. In addition, most regions are not fully utilizing CDS as an enforcement management tool. We recommend that DSSE reacquaint the regions with the full potential of CDS and assist them in using it as a full enforcement management system.

- Regional enforcement programs have generally assigned low priority to the review of new sources, because headquarters has not assigned them a high priority and resources are limited. New sources are often not included in CDS. Many regions do not monitor the States' programs to review new sources prior to construction. We recommend that regions (1) modify their program to implement CDS to assure that all new point sources of air pollution are included, (2) include new point sources in their compliance monitoring and field surveillance programs, and (3) review State new source review procedures.

Enforcement Actions

- Most regional offices are not fully utilizing their tools of constrained grants, selective enforcement, contractor assistance, and technical and legal support to encourage reluctant States to take the lead in achieving source compliance. Some regions have not developed an adequate compliance strategy. We recommend that all regions develop and keep updated a compliance strategy to guide the assignment and utilization of their resources. The strategy should effectively rank their enforcement effort to obtain maximum air quality impact with the limited resources. Regions must effectively utilize constrained grants to encourage States to adopt an enforcement posture, while continuing to work closely with States to develop a cooperative relationship.

- RegionalEnforcement Divisions do not fully understand Federal facilities enforcement. We recommend that regions review their compliance strategy for Federal facilities and determine means to: (1) improve the program's focus and (2) bring the skills and powers of EPA enforcement to bear on this problem.

- Although most regions interviewed understood the problems of chain of custody, many States did not. We recommend that the Office of the General Counsel, assisted by OAWM, rectify this situation by widely distributing a guidance document written so that an engineer or environmental specialist will understand the necessary precautions to be taken in gathering evidence so that it will be admissable in a court proceeding.

- DSSE, in conjunction with the Office of the Air Quality Planning and Standards (OAQPS), should actively assist the regions in dealing with the problems of differing EPA and State interpretations of SIP regulations. Some States are interpreting the SIP too leniently; this could force EPA action to revise the SIP.

- OEGC should make every effort in its communications with FEA to have the difficulties arising from FEA Regulation 215 solved so that compliance by coal-burning combustion sources will not be hampered. FEA Regulation 215 places restrictions on the lowering of sulfur content in fuel.

- EPA should request Congress to expand our authority by amending Section 113(b) of the Clean Air Act to provide for civil penalties so that, if deemed appropriate, a source's dilatory conduct in a civil proceeding might be penalized. At present, sources may have a positive incentive to keep extending negotiations on a possible consent decree.

Point Source Compliance

- At the beginning of FY 1975, 39% of the major point sources were reported to be in final compliance, 38% were known to be out of compliance or on a schedule, and 23% were of unknown status. This data, based on a national survey conducted by the Review Group, indicates that the initial FY 75 MBO data presented a good estimate of source compliance information on a national basis. The number of sources with unknown status may be due, in part, to poor communications between EPA and State and local air pollution control agencies. The Review Group found that knowledge of a source's compliance status was greater at the local level than at the State, and in turn, greater at the State level than at the Federal level.

- Certain large categories of sources are not likely to meet emission regulations, as a group, in many areas of the country by July 1975, because of fuel availability or a decision on the sources part to oppose regulations. Among these are coal-fired power plants, steel plants, smelters, refineries, and large municipal incinerators. These sources are important; for example, 76% of all SOx emissions are estimated to be from three categories: power plants (58%), petroleum refineries (9%), and copper smelters (9%).

  Aside from large categories, some smaller sources found only in certain geographical areas are also likely to be out of compliance in mid-1975. Many, of course, will be on compliance schedules. Some examples are: waste wood boilers, veneer dryers, grain elevators and dryers, coal-fired industrial boilers, cotton gins, and hydrocarbon sources (which include gasoline stations, paint sprayers and dry cleaners).

- The Agency's effort to deal with pollution from Federal facilities is generally lagging behind the program in the private sector. At the end of FY 75, 63% of Federal stationary sources are projected to be in compliance, as compared to 94% for private facilities. The Federal facilities FY 75 start levels are similarly lower (16% vs. 39%). There are, however, only 382 major federal facilities currently tracked, and these may differ in kind from private facilities. EPA's effectiveness in this area is of symbolic importance.

Resources

- We recommend that 13 additional positions should be sought for regional stationary source enforcement programs. The greatest need is in Region V. These additional resources represent the minimum increase thought to be necessary to maintain the basic stationary source program. It does not provide for program contingencies (e.g., execessive litigation) and it assumes EPA as a whole is tight on resources.

- Regions I, III, and VI are providing State grantees with more $105 grant money to be spent each year than the constant level of funding that the region is allocated. Since air pollution control agency grants are generally forward funded, this procedure is legal. The consequence of this methods of grants management, however, is that the region increasingly uses future year funds to finance current year programs, assuming a constant (or decreasing) level of funding from year to year. One region will have to cut its grants by 20% in FY 77 unless it changes its policies or its grant funds are increased. Headquarters response to this situation is recommended. The regions should be encouraged to immediately initiate a prompt resolution of this problem of their own.

Procedural and Communication Problems

- Most of the SIP's that do exist are not maintained in an up-to-date, organized fashion by the regional offices, *i. e.*, the current content of the implementation plan is unknown. The regulations sections of most SIPs are generally maintained, although problems in even this key area were found in a few regions. We recommend that the regions put the necessary effort into keeping an up-to-date record of all State Implementation Plans, including compliance schedules, modifications, etc.

- Procedures for delegation of New Source Performance Standards and national Emission Standards for Hazardous Air Pollutants enforcement to States (localities) are not well understood in the regions and States. Guidance is needed.

- Too often technical assistance provided to the regions depends entirely on whether someone knows the right person to call. DSSE and OAQPS should jointly develop and distribute a list of experts available as witnesses or for special expertise compliance purposes, and provide continuing liaison.

EPA's policy mechanism has not yet resolved a number of significant State Implementation Plan related issues, e.g., fugitive dust and supplementary control systems. EPA has also not established approved stationary source SIP regulations for all AQCRs in about 13 States (all of Ohio for example). No action can be taken by EPA's enforcement program to bring the sources into compliance if there is no SIP.

- In order to expedite enforcement actions, the authority to sign §114 letters and notices of violation should be delegated to the regional Enforcement Division Directors.

- Compliance schedules are slipping due to equipment delays. We recommend that the Division of Stationary Source Enforcement (DSSE) should, based on regional input, provide the regional enforcement divisions with guidance on how to handle equipment delays, and write an updated report on compliance schedule delays so that the regions are kept informed as to what is considered a generally "expeditious" schedule.

- Headquarters concurrence requirements for compliance schedules and enforcement orders should be reduced or eliminated.

- Regional offices should bear the sole responsibility for the quality and timeliness of their *Federal Register* packages for compliance schedules. Headquarters' review should be limited to matters of policy and major substantive issues.

- National Program Managers, particularly DSSE, must carefully monitor requests made by their staff for reporting beyond the Program Planning requirements. The regions should use their leverage with the Office of Regional Liaison to reduce ad hoc requests for information.

- OGC/DSSE should develop a legal memoranda case index on a category by category basis, and distribute copies of all listed memoranda and cases to the regions.

II. INTRODUCTION

The air compliance program is the Nation's first, full-scale effort to achieve compliance with an environmental law according to strictly defined deadlines. These deadlines are approaching, and in view of the critical nature of the air compliance effort, it is important to assure that the program is proceeding successfully.

In May 1974, EPA's, Assistant Administrators for Planning and Management, Enforcement and General Counsel, and Air and Waste Management established an interoffice evaluation team, the Air Compliance Program Review Group, to study the program. Members of the Review Group were drawn from the Program Evaluation Division (PED) of the Office of Planning and Evaluation, the Office of Resources Management, the Office of General Counsel, the Division of Stationary Source Enforcement of the Office of General Enforcement, and the Office of Air and Waste Management. Each region assigned one liaison person to work with the Review Group. PED has primary responsibility for the review. This report is the product of that review.

The objective of the air compliance review is to determine if the stationary source air compliance program is achieving its goals through program plans based on reasonable priorities. These program goals are:

- To bring sources into compliance on schedule or as soon as thereafter as is reasonable.
- To have the States and localities assume the primary responsibility for achieving source compliance.

Eventually, it will be possible to judge the success of the air compliance program and EPA's air program as a whole on the basis of air quality. The Review Group, however, felt that, at this time, it was most appropriate to review the air compliance program from the point of view of source compliance levels and program activity and knowledge. Accordingly, the Review Group was interested in determining which program characteristics correlate with high levels of point source compliance. Throughout, this report discusses those factors identified as contributing to a successful compliance program--for example, complete source inventories, complete regulations, aggressive enforcement program based on priorities, cooperative State and local programs, and available technology. It was not possible, however, to identify the most important factors because final compliance dates have not been reached for many sources. Furthermore, each EPA regional office faces different sets of sources, initial levels of compliance, and different State and local program levels of effectiveness. In addition, the Review Group found that different regions had chosen to emphasize different aspects of the program.

This report assumes that a successful program is a balanced program relying heavily on State and local agencies to take the lead with EPA pushing them to take the lead when necessary.

METHODOLOGY

The review is being conducted in two phases. Phase I focuses on evaluating the effectiveness of the current program in achieving its goals and making recommendations to improve the efficiency and effectiveness of the present program. The Review Group also identified and reviewed the resource requirements of the program. This report summarizes Phase I.

Phase II will investigate further some of the issues identified but not fully addressed or resolved in the Phase I review, and consider a range of options to improve the program as a whole.

Information for this report was collected primarily through visits to all EPA regional offices and certain State and local air pollution control agencies. Interviews were conducted with one State agency in each region, and seven local agencies were visited within the selected States. By meeting with the different jurisdictions, the Review Group was able to gain an understanding of the program at all levels.

In its field trips, the Review Group used a number of approaches to gain an understanding of regional programs. These included:

- Written questionnaires sent to the regions in advance of the Review Group's visit.
- Using selected enforcement actions as case studies to give the Review Group insights into specific details of regional programs.
- Selecting a sample of specific sources in a locality, then discussing them at the regional, State and local level. The discussions indicated variations in the awareness of problems and knowledge of source compliance.

- Arranging joint division meetings in the regions to help understand internal communication in the region.
- Taking a representative of an adjoining region on each regional visit to provide the Review Group with wider regional perspective.
- Selecting a random sample of sources from the National Emissions Data System (NEDS) and asking each region to provide the information available on the compliance status of its sources. This allowed the Review Group to independently assess the status of source compliance vis-a-vis the Management-By-Objective (MBO) data, and also to assess the involvement of State and local programs in obtaining source compliance.

None of these approaches, however, would have been successful without the full assistance of personnel in Headquarters, regions, States, and localities. Many of the issues this report discusses were raised by those interviewed. Finally the Review Group acknowledges that the report does not fully reflect the significant achievements of those working in the air compliance program.

III. PRESENT AND PROJECTED COMPLIANCE LEVELS FOR POINT SOURCES

The primary objective of EPA's air compliance program is to bring point sources into compliance on schedule (generally by mid-1975) or as soon thereafter as is reasonable, with State Implementation Plan (SIP) emission regulations.[1] The Review Group attempted to determine if this objective is being achieved. It found:

- o At the beginning of FY 75, only 39% of the point sources were in final compliance.
- o The 94% point source compliance level projected by the regions for the end of FY 75 is unrealistically high.

This chapter first reviews the problems with presently available point source compliance data and then discusses the basis for the above findings.

COMPLIANCE DATA ON POINT SOURCES

A great deal of effort is expended at the local, State, regional, and Headquarters levels to track and report compliance data on point sources. Air output commitments for point source compliance under EPA's Management-by-Objectives (MBO) system serve as surrogates for EPA's central air goal: achieving the National Ambient Air Quality Standards (NAAQ's). Under this system both Headquarters management and the regional offices can focus on discrete outputs as increments toward the central goal of the Clean Air Act.

The system, however, is not perfect because of poor inventories and problems of definition. In addition, point source compliance is not a precise surrogate for air quality. Thus, point source compliance data as reported in the MBO system or obtained from the Review Group's survey are not perfect indicators of the performance of the air compliance program. In addition, the MBO system itself has certain problems.

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[1] This report will refer to the final compliance date for sources as mid-1975 even though many sources are subject to immediately effective regulations and some sources have regulations with final compliance dates after mid-1975.

Inclusion of a Source in the MBO System

The Division of Stationary Source Enforcement (DSSE) believes that an enforcement program should keep track of sources which, if control systems were not operating, could emit over 100 tons per year (TPY). DSSE feels that these potential 100 TPY sources should be monitored, along with sources actually emitting 100 TPY or more. EPA adopted this philosophy in its FY 75 Air Program Planning Guidance, which states:

> "A point source is defined to mean any facility capable of emitting more that 100 tons per year (TPY) of any single pollutant assuming no pollution controls... Utilizing potential emissions (will) eliminate the problem of "disappearing" sources encountered in the past and provides consistent accounting of progress of air enforcement."

Inclusion of sources in the MBO system, however, is a function of location because the different regional offices and States interpret "potential" differently. First, while everyone understands that a facility with an actual emission of 45 TPY, if its 95% effectiveness control device is operating, has a potential for emitting 900 TPY, different agencies make different assumptions regarding a facility's emissions levels when it has reduced its emissions by a process or fuel change, or is limited in its operation due to seasonal factors.

Secondly, DSSE has intentionally provided flexible guidance on source inclusion, but this has allowed State and local agencies to either: 1) list as few sources as they can if they distrust Federal "meddling", or 2) list as many sources as they can if they are concerned that §105 Air Pollution Control Agency Grants are, or will be, tied to the number of 100 TPY sources. Certain regions also expressed the concern that any decrease in their list of sources would lead to a decrease in their resources allocation. Standardization of definition is critical if the point source compliance data is to be coherent on a national scale. The need for standardization was not satisfied by DSSE's list of those classes of sources that were to be considered 100 TPY sources.

3.1--The Review Group recommends that the Division of Stationary Source Enforcement ensure that all regions and States follow the same understanding for developing their lists of "potential" 100 ton per year point sources and that the FY 76 definition be specific enough to allow standardization.

The Office of Air Programs and the vast majority of regions, States, and local offices visited by the Review Group generally understood the philosophy behind focusing on potential emitters, in the compliance monitoring program, but many believe it to be a second priority, given the present program status and resource constraints. However, while protesting the inappropriateness of the change, States and regions are gradually switching to "potential."

Table 1 gives a projection of the expected number of point sources, by region, under the potential definition. The expected addition of over 3,000 sources (presently of unknown status) to the MBO system is one reason why the system's projection for 94% point source compliance at the end of FY 75 is optimistic.

TABLE I

REGIONAL MBO OUTPUT COMMITMENT vs. REGIONAL PROJECTIONS ON FINAL NUMBER OF POINT SOURCES

Region	FY 75 Program Planning Start (MBO)	Projected "Final" Number	Notes
I	877	1500-1700	Contract being completed
II	1356	over 1650	N.Y. will increase from 648 to over 1000
III	2546	-	May go up in Pa., Va., and W. Va.
IV	3097	3600	Updated inventory due 7/31/74
V	1793	much greater	Will increase when region converts to potential definition
VI	3450	3750	Tex. uses 50 TPY as potential definition
VII	764	greater	Mo. and Neb. inventories incomplete
VIII	414	450	Some discrepancies, but generally complete
IX	1690	1800-1950	Ariz. uses monthly "actual". Calif may increase somewhat.
X	680	1200	Contract just completed
otal	16,667	19,050-19,400	Plus Regions V and VII increases

Classification of a Source in the MBO System

The problem with definitions goes beyond inclusion of sources in the MBO system. There is a basic concern in the regions as to what "Air Output la" (Number of Sources in Final Compliance) means. The Air Guidance defines what is necessary to determine final compliance in an acceptable manner, and the Guidance requires that this be done at least once a year for all 100 TPY "potential" sources. But there is not sufficient appreciation that as reported in MBO "in final compliance" really means "possibly capable of being in final compliance, and not discovered to be in violation at time of inspection".

As the air stationary source enforcement program develops a more mature compliance monitoring effort, "in final compliance" will have only limited value as an output because "all" sources will be in final compliance as the term is now defined. For the moment, the program planning data is made suspect because certain states and regions consider a source out of compliance unless they have determined otherwise, while other regions and states (consider a source in) compliance unless are told otherwise; the latter is contrary to the Regional Guidance.

A further problem with "in final compliance" is that the Guidance requires each source to be checked in an acceptable manner during the fiscal year before it can be classified as in compliance. This means, in theory, that the level of "final compliance" would start at zero at the beginning of the fiscal year. Build up to a peak on June 30, and then drop to zero again as of July 1. This is illogical, and most regions have not followed the guidance on this point.

3.2--The Review Group recommends that DSSE should initiate a change in the regional guidance to have final compliance determined by an acceptable manner within one year on a continuius basis.

In at least one region verification of compliance status would be a problem even with this revision in the guidance - the region does not have a name and address for every source reported under MBO.

In addition, it was pointed out by Region IV that since many of its sources will be coming into compliance late in FY 75 or just before the end of July 1975, it will be impossible for them to verify them all by June 30, 1975 because of the timing and end of year crunch. Thus, the regions will either not meet their compliance commitments or not properly verify compliance.

3.3--The Review Group recommends that the Office of Resource Management provide guidance to the regions on how to report source compliance at the end of FY 75 if there is not enough time to verify compliance by an acceptable method.

The present guidance on criteria, for verifying compliance raised questions in some regions.

3.4--The Review Group recommends that DSSE review with the regions the criteria for verifying compliance so that the Guidance can be updated for FY 76.

Relationship of Point Source Compliance to Air Quality

Point source compliance is not a precise surrogate for air quality. Source compliance with emission regulations is related through the SIP's to EPA's ambient air quality goals. The regulations, however, do not exactly achieve the goals. NAAQS can be achieved without 100% source compliance if some sources are overcontrolled. In other cases, 100% compliance by all sources will not result in attainment of NAAQS for certain pollutants in certain AQCR's. The situation is further complicated because EPA's enforcement program is focusing only on the larger sources. The net effect is that national or regional point source compliance levels provide only a rough surrogate for air quality goals. Even knowledge of noncompliance by specific sources or classes of sources is generally inadequate, by itself, to determine that NAAQS's have not been attained. It can be said, however, that the higher the level of point source compliance the more likely it is that the NAAQS's are being attained, particularly if the compliance program has appropriately prioritized its efforts.

The Review Group was told that many AQCR's will not meet the 24-hour Total Suspended Particulate (TSP) air quality standard by mid-1975, even with 100% source compliance. This comes as no surprise, since it is estimated that 50 to 60 Air Quality Control Regions will not meet TSP standards. Reasons include the "high urban background" due to such factors as re-entrained street dust or rubber tire particulates, and the presence of fugitive dust in urban as well as rural areas. The more progressive local control agencies are tackling the problem. Detroit has ordered covering of outside storage piles and wetting down of gravel and other similar materials. The Puget Sound has begun a study to identify the source of particulates collected in its samplers. It has also ordered that roads in industrial areas be paved, beginning with those nearest the samplers.

EPA's air program is attempting to tackle the TSP problem. It has sponsored studies in cities such as New York, Philadelphia, and Pittsburgh to determine the source of the particulates. In addition, EPA is examining SIP's in selected AQCR's to see whether they need revisions. If revisions are required, and if the causes of the poor ambient air quality are unknown and/or maximum reasonable controls are already being applied, EPA may not be able to propose a viable TSP control strategy. At present, the only legal alternative that extends for more than one year is for EPA to approve or promulgate a control strategy requiring sources to close down. This situation would be analagous to the situation where a Transportation Control Plan (TCP) had to include unacceptable control measures. Legislation similar to that asked for to deal with the TCP problem would provide a solution to this problem. The legislation should not extend existing compliance dates which are reasonable.

3.5--The Review Group recommends that the Office of Air Quality Planning and Standards propose appropriate legislation to allow extension of final attainment dates for State Implementation Plans in those Air Quality Control Regions where National Ambient Air Quality Standards will not be met and presently available controls strategies would be economically or socially unacceptable.

PRESENT COMPLIANCE LEVELS FOR POINT SOURCES

As part of the program evaluation effort, the Review Group conducted an independent survey of point source compliance. The purpose was threefold: to independently assess the impact of the air compliance program, to gauge the extent of State and local participation, and to cross check and gain insight into the MBO reporting system. The results of the survey, as of the beginning of FY 75 are:

- 39% of the point sources were in final compliance, 38% were known to be out of compliance, and 23% were of unknown status.

- State and local air pollution control agencies have made 81% of the point source compliance determinations, established 82% of the point source compliance schedules, made 89% of the determination of compliance with increments of progress under compliance schedules, and initiated over 43% of the reported enforcement actions.

- Immediate enforcement or surveillance action was necessary for 42% of the point sources.

- o Nationally, the compliance program is proceeding in accordance with the FY 75 initial MBO projections for sources regulated by SIP's.

Tables 2, 3 and 4 present the results of the survey and MBO data for the start of FY 75.

Because of resource and time limitations, the total sample was large enough to allow for significant analysis at only the national level. The analysis was done in two parts--first on the entire sample, then on a subsample of sources identified as being included in the MBO commitments.

A national mean with confidence intervals equal to two times the standard deviation was calculated for various categories of compliance and noncompliance. A source was assumed to be incompliance if the region reported it as in compliance; for purposes of the survey, compliance did not have to be verified by one of the acceptable methods listed in the FY 75 Regional Guidance. The weighting process accounts for the different percentages for almost equal sample classes in Tables 2 and 3. Table 2 shows the percentages of sources in compliance of the total sample (36% ± 5.6%) and of the MBO subsample (39% ± 7.9%). These results compare favorably to the MBO data as of July 1974 (39.7%).

Table 3 presents a more detailed assessment of noncomplying sources. Again, total sample (15.2% ± 4.4%) and MBO subsample (18.2% ± 6.7%) percentages of sources known to be out of compliance and not meeting scheduled increments of progress tend to substantiate the 16.1% level reported by MBO data.

The most interesting result of the survey appears when sources of unknown compliance are grouped with the noncomplying sources. The new group (Total Actionable Sources in Table 3) consists of those sources for which some action, either surveillance or enforcement, is necessary. According to both the survey and MBO data, between 40% and 54% of MBO sources fall into this "necessary action" group. A slightly larger proportion (51% ± 5.6%) of the total sample of all sources requires some action, as might be expected.

Based on the results of the survey's source-specific information it can be concluded that the initial FY 75 MBO data presented, on a national basis, a good estimate of source compliance information. There appeared to be, however, region-by-region variations in consistency.

Table II

COMPLIANCE STATUS SUMMARY

	IDENTIFIED POINT SOURCES									
		COMPLIANCE STATUS								
					OUT OF COMPLIANCE					
								On Schedules		
Data Source	Total	In Final Compliance	Unknown Compliance	Total	Without Schedule	Unknown Schedule	Total	Meeting Increment	Not meeting Increment	Unkno
MBO Reporting System	15,728	6253 (39.7%)	4629 (29.4%)	4846 (30.8%)	1004	*	3842	2306	758	778
Sample All Sources	334	128 (36.9%± 5.6%)	132 (35.9%± 5%)	74 (27.3%± 5.2%)	18	5	51	33	6	12
Sample MBO Sources	151	62 (39.0%± 7.9%)	38 (22.9%± 6.7%)	51 (38.0%± 8.8%)	9	4	38	21	3	9

*** The MBO system does not report this category directly, but includes applicable sources under 1) out of compliance, without schedule, or 2) on schedule, unknown as to meeting increments.**

Table III

ACTIONABLE SOURCES
SOURCES SUBJECT TO MONITORING OR ENFORCEMENT ACTIONS
(% of total sources)

	All Sources	Sample MBO	MBO
SOURCES SUBJECT TO IMMEDIATE ENFORCEMENT ACTION			
on schedule, not meeting increments + out of compliance, not on schedule	8.6%±3.4%	9.5%±5.4%	11.2%
OUT OF COMPLIANCE ACTIONABLE SOURCES			
SUBJECT TO IMMEDIATE ENFORCEMENT ACTION + on schedule, unknown as to increment + unknown as to schedule	15.2%±4.4%	18.2%±6.7%	16.1%
TOTAL ACTIONABLE SOURCES			
OUT OF COMPLIANCE ACTIONABLE + unknown compliance status	51.1%±5.6%	41.1%±8.8%	45.6%

("All Sources" and "Sample MBO" from survey by Review Group. "MBO" from 1 July 74 Program Planning commitment).

Evaluation of the data on State and local participation (Table 4) in the air compliance program shows that 80% to 90% of the effort in determining compliance, establishing schedules, and following them up, is being done by non-Federal agencies. The high level of State and local participation in the air compliance progam does not mean that they are doing an adequate job of assuming primary responsibility for achieving source compliance. The high percentage of "actionable" sources indicates the inadequacy of state and local efforts.

The size of the "actionable" class of sources may be due, in part, to poor communications between EPA and State and local air pollution control agencies. The Review Group discussed the compliance status of a small group of sources at the Federal, State, and local level in each region. The discussion indicated that knowledge of a source's compliance status increased as the Review Group went from the Federal to the State to the local level. Poor communications may also explain why Table 4 implies that EPA takes approximately 57% of the enforcement actions; State and local actions may not have been fully reported to EPA.

EXPECTED STATUS OF POINT SOURCE COMPLIANCE IN ONE YEAR

The Review Group does not expect the status of point source compliance at the beginning of FY 76, to be as high as the 94% projected by the first quarter FY 75 MBO data--that is, the program will not do as well as implied by the regions' combined commitments. A more realistic estimate for point source compliance at the end of FY 75 is less than 83.5% or less than 17,170 of an expected 20,500 point sources. This estimate was made by applying reasonable assumptions as to the percentage of sources that would move from their categories (unknown, on schedule, etc.) at the beginning of FY 75 into the "in compliance" category at the end of FY 75.

During its visits, the Review Group tried to discuss with the regions the realism of their commitments on the status of source compliance at the end of FY 75. In almost every region, the MBO number of noncomplying sources is considered to be low. They do not adequately allow for: identification of additional, noncomplying sources; discovery of sources that have fallen out of compliance; inadequate State or local efforts; litigation on SIP's; or slippage of compliance schedules (Region IV expects 25% of their schedules to slip past mid 1975). Some of the major reasons for source non-compliance after mid-1975 will be discussed in later chapters: incomplete source inventories, delays in developing compliance schedules, delays in completing SIP regulations, and uncooperative or unaggressive State or local programs. A number

Table IV

COMPLIANCE MONITORING ACTIVITY
Federal vs. State & Local Actions

	ALL SOURCES			MBO SOURCES		
	No. of Actions	%* Federal	% State - Local	No. of Actions	% Federal	% State - Local
Determination of Compliance	128	10.9	84.4	62	19.4	80.6
Determination of Non-Compliance	74	9.5	82.4	51	7.8	82.4
Establish Schedule	51	5.9	94.1	38	7.9	92.1
Determination of Compliance with Increments	32	12.5	87.5	26	11.5	88.5
Enforcement Actions	10	50.0	50.0	7	57.1	42.9

* The sum of Federal and State-Local percentages may not equal 100% because of information gaps.

BASED ON SURVEY BY REVIEW GROUP

of other causes, most beyond the control of compliance programs are reviewed in this chapter, these include: large sources of air pollution which chose to resist air pollution emission regulations, miscellaneous small sources with assorted technical or economic problems, and non-compliance of Federal facilities.

Delayed Compliance by Major Point Sources

The Review Group found that certain large categories of sources are not likely to meet emission regulations, as a group, by July 1975. Among these are coal-fired power plants, steel plants, smelters, refineries, and large municipal incinerators. The importance of these source catgories is illustrated by observing that 7.6% of all SOx emissions are estimated to be from three of these categories: power plants (58% including oil-fired plants), petroleum refineries (9%), and copper smelter (9%).

Reasons for non-compliance vary. A number of power plants that had expected to meet emission requirements by switching to oil, suddenly found that oil was as difficult to obtain as was low-sulfur coal in the East. In addition, the plants had to comply with Federal Energy Administration Regulation No. 215, which placed constraints on converting burners to low-sulfur coal or oil (see Chapter IV). In order to continue burning high-sulfur eastern coal, they had to use Flue Gas Desulfurization Systems (FGDS). Even if power plants were willing to use FGDS, three years would be required to purchase and install them, well beyond time for the mid-75 deadline. Many plants, however, have chosen to fight the use of FGDS, preferring intermittent control systems or tall stacks, which disperse instead of contain pollution. Therefore, many power plants will not be in compliance in July 1975.

The Clean Air Act has been amended by the Energy Supply and Environmental Coordination Act of 1974. This Act will affect control requirements by extending compliance deadlines beyond mid-1975 on some coal-burning power plants in areas where primary NAAQS are being achieved.

The steel industry is another problem area. Many steel companies have been recalcitrant in installing the necessary, but expensive, control equipment, with the result that few can be expected to meet the mid-1975 deadlines. In addition, because of court suits, smelters have generally not been subject to approved SIP regulations until recently (most still are not), so smelters will not be in compliance by July 1975. Refineries have presented a multitude of technological problems related to control equipment for various kinds of pollution. Most enforcement programs are just beginning to work with refineries, and few refineries will be in final compliance in less than one year. Strategies for handling these problems are discussed in Chapter IV, under Status of Enforcement Effort.

Delayed Compliance by Small Point Sources

Aside from large categories, some groups of smaller point sources are also likely to be out of compliance in July 1975. Many, of course, will be on compliance schedules. Some examples are : coal-fired industrial boilers, cotton gins, waste wood boilers, veneeer dryers, grain elevators and dryers, and hydrocarbon sources (which include many small sources such as gasoline stations, paint sprayers and dry cleaners).

Again reasons for this lack of compliance vary. Industrial boilers may have trouble obtaining clean fuel or control equipment. Cotton gins may not be subject to enforcement pressure because of location and seasonal nature. Waste wood boilers may have technological problems. Other industries have encountered delays as they experiment to discover ways to control their emissions. Among the examples cited by the regions were: a glass frit plant in Virginia which emits particles so fine they pass through its baghouse; a waste wood boiler in Washington which uses logs soaked in Puget Sound and has not found control equipment which is not fouled by the salt; and grain dryers in Kansas which are experimenting with control methods to capture emissions. Many of these facilities will not have resolved their problems by mid-1975 and therefore will not be in compliance.

In major Northern and Midwestern urban areas, small point sources such as coal-burning industrial boilers and municipal incinerators have been problem sources. Region V expects that a large number of industrial boilers, which have not been able to convert to oil, will be out of compliance at the end of FY 75. Regions II, III, and IV expect to find municipal incinerators not yet in compliance. This situation exists largely because city governments act slowly, and frequently the States and occasionally the regions encounter policital pressure not to enforce. A similar situation occurs with burning at open dumps in small cities. Alternative systems will not always be in operation by July 1975.

One other problem encountered in urban areas is residential coal burning. Frequently, coal is burned in low-income areas that lack the means to switch to another fuel. Also, residential coal suppliers are usually not able to compete with large industries for low-sulfur coal. Accordingly, residential coal is frequently high in both sulfur and ash content. This problem deserves increased attention by EPA.

3.6--The Review Group recommends that DSSE provide the regions with guidance as to enforcement policy for: 1) industrial commercial boilers and 2) area sources such as residential coal burners.

Delayed Compliance by Economics

Finally, there is the delay caused by economic considerations. Many older, smaller sources might have to spend significant fractions of the total value of their plant on control equipment. Small old foundries are a prime example. Forcing such plants to install control equipment could force some to close down completely.

Under §110 of the Clean Air Act, economics can be taken into account only in the development or revision of the SIP regulations that are necessary to achieve the air quality standards and in setting the final compliance date. Once these regulations have been set, in theory, the plant must be closed down if it cannot comply wth the regulations. In practice, however, economics does enter to some extent into the implementation process. For example, the fastest way of achieving emission limitations for a plant with multiple emission points would be to completely close it down and install controls on all emission points at the same time. In practice, a staggered installation schedule has often been agreed upon. Similarly, a source that cannot obtain necessary control equipment is usually put on an enforcement order that in effect provides more time to acquire the equipment rather than closing it down.

Table 5 presents a regional breakdown of some expected post mid-1975 enforcement problems by source category and region.

Federal Facilities

Many States are concerned that some Federal facilities will not achieve compliance by mid-75. Some States object to pressure from EPA to bring their stationary sources into compliance when the Federal facilities are not subject to the same kind of pressure.

The Review Group has concluded that the Agency's effort to deal with Federal point source is generally lagging behind the program to obtain compliance by point sources in the private sector. This is illustrated by MBO projections--at the end of FY 75, 63% of Federal stationary sources are projected to be in compliance, as compared to 94% of all

Table 5

Some Expected Post Mid-1975 Compliance Problems by Source Category

Region	Source Category
I	Waste wood boilers Pulp mills
II	Federal facilities Area sources Steel mills Municipal incinerators
III	Steel plants Power plants Petroleum refineries Federal facilities Glass frit plants Foundries Coke ovens Quarry operations Municipal incinerators Area sources
IV	TVA power plants Cotton Gins Steel mills Quarry operations
V	Power plants Steel mills Industrial boilers Stationary hydrocarbon sources Municipal incinerators
VI	Smelters Refineries
VII	Grain elevators and dryers Federal facilities Power plants Smelters
VIII	Steel mills Smelters Hydrocarbon sources
IX	Wood products Waste wood boilers Federal facilities Smelters
X	Wood products and waste wood boilers Veneer dryers Federal facilities Smeltters

facilities. The Federal facilities start level for sources in compliance was 16%, at the end of the first quarter in compliance was up to 35%. There are, however, only 382 major Federal facilities currently tracked and these may differ in kind from private facilities.

Executive Order 11752, among other requirements, mandates that Federal facilities show leadership in achieving compliance with Federal, State, and local regulations for the control of air pollution. In spite of this, State agencies, and Regional office personnel cited examples of "foot-dragging" by Federal facilities. Some of the delays have apparently resulted from disagreements over whether various requirements are substantive or procedural in nature. Executive Order 11752 mandates that Federal facilities are subject to substantive requirements such as meeting emission regulations. The circuit courts are split on whether a State has the authority to require that Federal facilities obtain operating permits from State agencies, a precedural requirement. This unwillingness on the part of Federal facilities to adhere to procedural requirements has created problems. For example, many States use variance procedure in issuing compliance schedules to allow sources more time to comply. The Puget Sound Agency and other agencies gave the Review Group examples of Federal facilities not meeting regulations that would not apply for variances, even though the agency was inclined to grant them. In one case, the Puget Sound Agency attempted to assess a civil penalty for failure of a Federal facility to comply with an applicable emission standard; a local court dismissed the case because the court did not have jurisdiction in State/Federal controversies. The court recommended an appeal to the U.S. Circuit Court Appeals. Unfortunately, the Puget Sound Agency did not have the funds to appeal the case. If in fact Federal facilities are not subject to penalties applicable under SIP's, then Federal facility compliance is voluntary.

3.7--The Review Group recommends that Office of Federal Activities and Office of General Counsel determine if there is legal means for compelling Federal facilities to comply with emissions limits. If this issue remains a problem, EPA should consider recommending appropriate amendments to the Clean Air Act to strengthen the States' authority in this area.

Granted the legal problems in compelling compliance by Federal facilities, the Review Group believes that a more credible effort could have been mounted by more effectively using the procedures established under OMB Circular A-78, which requires OMB approval of air pollution abatement expenditures projected by Federal facilities. Unfortunately, however, such an effort would still not have overcome

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the inadequate data base (a poor inventory of point sources) and the lack of an agressive compliance progam designed to achieve Federal facility compliance by mid-1975. A draft program of action was given to the Review Group by the Office of Federal Activities but is has not been approved.

Although organizational responsibility for the Federal facilities program varies from region to region, this did not seem to be a factor in the general attitude of personnel working with Federal facilities. The attitude seems to be one of conciliation without a "sense of urgency" in moving to obtain compliance by Federal facilities. Regional enforcement personnel generally seem uncertain about the extent of EPA's powers and responsibilities. No region seems to have succeeded in establishing an effective relation between the regions' Federal facility Offices and the Enforcement Division. The Review Group found some regions diluting their Federal facilities efforts by tracking all facilities (e.g., very small post offices), rather than focusing on major facilities, on the assumption that it would be undesirable for anybody to be able to point to even one Federal violation.

3.8--The Review Group recommends that each Regional Office review its compliance strategy for Federal facilities and determine means to: 1) improve the program's focus; 2) instill a sense of urgency about the approaching compliance deadline; and 3) bring the skills and powers of EPA enforcement to bear on this problem.

Headquarters support is needed before the regions can implement the above recommendation.

3.9--The Review Group recommends that OFA finalize its program of action and, jointly with OEGC, provide policy guidance to the regions on enforcement against Federal facilities.

IV. STATUS OF STATIONARY SOURCE COMPLIANCE EFFORTS

This chapter reviews the status of EPA's stationary source, air compliance effort. The areas addressed are:

- Emissions Inventories
- Compliance Schedule Development
- Compliance Monitoring Programs
- Enforcement Efforts

In each section of this chapter the area under discussion is defined, its status is reviewed, problems identified by the Review Group are discussed and recommendations are made. Throughout this chapter the efforts and involvement of State and local air pollution control agencies are highlighted.

STATUS OF EMISSIONS INVENTORIES

An emissions inventory--that is, knowledge of the sources of air pollution and their characteristics--is a key element in development of air pollution emission regulations and development of an enforcement strategy to implement the regulations. EPA's present emissions inventory, in the National Emissions Data System (NEDS) is not fully adequate for these tasks, and EPAs enforcement program for stationary sources is hampered accordingly. The inadequacies arise primarily from incomplete source listings and missing data for listed sources. In examining the air compliance program, the Review Group identified a number of problems which hinder the completion of emission inventories and limit the usefulness of current inventories.

Description of Current Point Source Inventories

NEDS was developed and is operated by the National Air Data Branch (NADB) of the Office of Air Quality Planning and Standards (OAQPS) in the Office of Air and Waste Management (OAWM). NEDS is the national emissions inventory for point and area sources of criteria pollutants. A point source is defined in terms of: (1) actual emissions of 100 tons per year in an urban area or 25 tons in a nonurban area, or (2) inclusion in a list of sources given in 40 CFR § 51 Appendix C, regardless of size (for example, nitric acid plants). EPA regulations (CFR § 51.7) require the States to update point source data semi-annually.

NEDS data are presently neither complete nor up-to-date. For example, NEDS contains no sources in New York State (see Table 6). And where there are data, they are often incomplete. Much of the data is several years old. As part of the general source update, NADB has assembled a list of 11,000 possible point sources not currently in NEDS (a verification file). They have asked the regions to determine

TABLE 6

STATUS OF NATIONAL EMISSIONS DATA SYSTEM (NEDS)
(as of June 5, 1974)

REGION/STATE	# PLANTS IN NEDS
REGION I	1890
Connecticut	152*
Maine	517
Massachusetts	659
New Hampshire	312
Rhode Island	96
Vermont	154
REGION II	608
New Jersey	335*
New York	
Puerto Rico	253*
Virgin Islands	20
REGION III	2340
Delaware	112
District of Columbia	44
Maryland	219*
Pennsylvania	1504
Virginia	277*
West Virginia	184*
REGION IV	6206
Alabama	323
Florida	810
Georgia	512
Kentucky	663
Mississippi	1536
North Carolina	1382
South Carolina	300
Tennessee	680
REGION V	4267
Illinois	678
Indiana	1041
Michigan	451
Minnesota	496
Ohio	1320
Wisconsin	281

TABLE 6 . (cont.)

STATUS OF NATIONAL EMISSIONS DATA SYSTEMS (NEDS)

REGION/STATE	# PLANTS IN NEDS
REGION VI	1435
Arkansas	238
Louisiana	260
New Mexico	260
Oklahoma	181
Texas	496
REGION VII	1899
Iowa	372
Kansas	913
MIssouri	260
Nebraska	354
REGION VIII	2092
Colorado	271
Montana	114
North Dakota	656
South Dakota	987
Utah	79
Wyoming	75
REGION IX	5059
Arizona	171
California	4687
Guam	12
Hawaii	116
Neveda	73
REGION X	952
Alaska	178
Idaho	197
Oregon	344*
Washington	233*
NATIONAL TOTAL	26748

* Indicates that CDS has more facilities listed than NEDS for this state

the status of these sources. While many sources in the verification file may be small, no longer in business, had their name changed, etc., nevertheless a spot check by NADB found that about one-third of the aluminum smelters in the country were not in NEDS.

In order to alleviate some of these problems, OAQPS has spent significant contractor money to assist the States in collecting and updating NEDS data. In FY '73, approximately $455,000 was spent by regions on emission data for NEDS, including development of hydrocarbon inventories and related software. An additional $218,000 was spent on emissions data for NEDS in FY '74.

NEDS was originally conceived to meet EPA's emissions inventory needs for: (1) planning efforts such as mathematical modeling for development and evaluation of standards and strategies, and (2) compliance information on individual sources. As operated by OAQPS, NEDS has focused primarily on planning and not on compliance needs because in 1972 the Office of Enforcement and General Counsel (OEGC) determined an enforcement data system was needed to assist the regional offices in tracking increments of progress in compliance schedules and enforcement orders and in scheduling compliance monitoring activities.

OEGC's Division of Stationary Source Enforcement (DSSE) and NADB discussed the possibility of expanding NEDS to fulfill enforcement needs. DSSE decided to develop the separate Compliance Data System (CDS).

While the reasons for creating CDS may have been valid, EPA basically has two systems because two organizations have the resources to go their separate ways. CDS and NEDS are designed to be compatible to the extent that CDS can use any available NEDS source identification number. NADB has now provided limited regional access to NEDS, and the source file has improved since CDS was started. Thus a single system may be more practical than it once was.

4.1--The Review Group recommends that Management Information and Data Systems Division of the Office of Planning and Management evaluate, in FY' 76, data requirements of the enforcement and air programs and determine if a single system will be feasible and cost-effective.

The use of and problems with CDS are discussed later in this Chapter.

Hazardous Air Pollutants Enforcement Management System

DSSE also developed the Hazardous Air Pollutants Enforcement Management System (HAPEMS) for use by the regional stationary source enforcement programs in monitoring sources under waivers and in compliance with National Emission Standards for Hazardous Air Pollutants (NESHAP). The Review Group found only Regions VII and IX using the HAPEMS system, and it was tracking only 35 sources in Region VII. The number of sources affected by the NESHAP regulations was considerably less than anticipated; hence, the regions have not felt a need for an automated system.

4.2--The Review Group recommends that DSSE drop HAPEMS as a separate data system and incorporate it into CDS.

Completion and Updating of NEDS

In FY '75 the Agency's air efforts are focused on source compliance. As a result, the Review Group found regional Enforcement Divisions collecting enormous amounts of information on sources from both the States and the sources themselves. This information is going into CDS and into development of enforcement cases and strategies; many regions, however, make little or no follow-up effort to expand the data collected to the extent necessary to update NEDS.

Several regions send out an APER form[1] with their § 114 letters.[2] This information would allow NEDS data to be updated. However, some Regional Enforcement Divisions argue that it is their job to enforce, and they do not have the time, resources, or responsibility to see that NEDS gets updated. The Review Group believes EPA's various offices must support each other wherever possible. Of course, any request for information from sources is subject to the Federal Reports Act. Information cannot be requested that is already available. Further, §114 requires the source to answer only when the information is requested for certain specific reasons. These reasons do not include general maintenance of an emissions inventory, but they do not prevent it.

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[1] Air Pollution Emission Report (APER) Form (OMB #158-R75) asks for enough information about a source so NEDS form (OMB #158-R0095) can be completed and data coded for input into NEDS. NADB is currently working on a modified APER form that will be more compatable with NEDS.

[2] Requests for information to which the source must reply (see Status of EPA Enforcement Efforts later in this chapter).

4.3--The Review Group recommends that a §114 letter to a source include a request to update a NEDS printout or to fill out an APER form (if no NEDS data exist). The §114 letter should clearly state what is requested and what is required.

Before this recommendation can be implemented, NADB will have to develop a new printout format - one that will be easily understood by sources.

Conversely, the NEDS verification effort can also be used to update CDS information. Yet the Review Group found that Enforcement Divisions in the Regions knew nothing about the NEDS verification file.

4.4--The Review Group recommends that the NEDS contacts in the regional offices notify the Enforcement Division when they identify new sources.

The need for intra-regional cooperation is evident in other areas of inventory development. Some regional offices are not assigning the same identification number to the same sources in both CDS and NEDS. Factors outside their control can contribute to this problem--for example, States can switch NEDS identification numbers. But the problem is certainly aggravated by lack of effort in the regional offices. In one region, for example, new CDS source numbers were going into NEDS but not vice-versa.

4.5--The Review Group recommends that regional offices carefully and continuously match up CDS and NEDS identification numbers. Regions should develop a formal program to see that source information they receive goes into both data systems as well as EPA's formal planning system.

Assigning the same regional person to both CDS and NEDS might be the most effective way of acting on this recommendation. This would lead to the improvement of both data systems.

The intra-regional communication problems are compounded by the fact that in several regional offices the person responsible for NEDS (1) had no independent means for assessing either the completeness or accuracy of the data or (2) did not expect to be putting significant effort into assessing the data base or encouraging the States to improve the data. Those responsible in the regional offices viewed themselves almost solely as conduits for information from States to EPA Headquarters.

4.6--The Review Group recommends that NEDS contacts be required to have an independent assessment of the completeness and accuracy of their data and that regions put the effort necessary into maintaining the data base and encouraging the States to improve and update the data.

Headquarters Support of Inventory Development and Use

The Review Group has identified a number of areas in which EPA Headquarters is inadequately supporting development or use of NEDS, or is creating problems by its policies. For example, the NADB contracts to develop and update State data for NEDS have, in the past (prior to FY '74), been monitored solely by NADB personnel. Several States will now no longer have anything to do with NEDS, partly because of the adverse impact of these and other contractors. Some problems with contractors may not have been avoidable even with local supervision. Nevertheless, the regional offices should have the lead in all interactions with their States.

4.7--The Review Group recommends that each regional office have, at the very least, co-project officer status on any Headquarters contract in its jurisdiction.

This contractor problem is a specific example of a generic problem discussed in Chapter VI--that is, Headquarters dealing directly with air pollution control agencies or sources without involving the regional offices.

EPA Headquarters has also created great confusion by changing basic definitions in midstream. The definition of a point source in FY '75 Regional Guidance is incompatible with the definition of a point source used by NEDS, as specified in 40 CFR 51.7. The difference is that NEDS lists sources by their actual emissions, while the guidance for Program Planning Management-by-Objectives (MBO) requires reporting on sources with the potential for emitting more than 100 tons per year (TPY). This meant that the regional offices, States, localities were made unable to readily use their computerized source inventories to develop complete lists of point sources on which they would report under the MBO system. There were valid arguments for defining MBO outputs as "potential", but in making this decision, EPA did not fully consider the implications on its data systems.

In addition to the impact within EPA, the changing definitions had an adverse impact on State and local air pollution control agencies because EPA by-passed the Federal Register in modifying the definition. One State observed that if the new definition had been proposed in the Federal Register, EPA would have had to justify the change, and the States and others would have had an opportunity to comment. In addition, EPA is now operating with two formal definitions, one imposed via the Federal Register and the other via grant constraints. DSSE has indicated that the differences on this issue have been resolved.

A formal proposal will be published in the Federal Register as part of a larger package of regulatory revisions.

4.8--The Review Group recommends that OAQPS propose a modified definition of a point source separately in the Federal Register if the larger package of revisions causes more delay.

This issue also brings up another area in which Headquarters is inadequately supporting the regional offices. Region IV, in an attempt to use NEDS to identify most potential 100 TPY point sources, developed a computer program to determine those sources in NEDS with actual emissions greater than 100 TPY. Other Regions ended up making these calculations by hand. While Region IV's initiative is commendable, it would be wasteful for all 10 regions to develop computer programs for the same task.

4.9--The Review Group recommends that OAQPS aggressively assume responsibility for developing computer program needed by all regional offices.

Maintaining and Updating Inventory Files

Only one region maintains hard copy files for all sources in NEDS (albeit, not daily). The Review Group received no explanation as to why the files were needed. These files contained NEDS forms,[3] State permits, correspondence, and compliance schedules. The only reason the Review Group knows is that the files could be useful to keep records on the assumptions used in coding NEDS forms. Several regions indicated they (or the States) had difficulty in validating NEDS data because the assumptions used by contractors were not documented.

4.10--The Review Group recommends that OAQPS review the need for individual hard copy source files and recommend to the regional offices whether or not they should be maintained for all sources.

In order to keep their NEDS files current, the regions require information on new air pollution sources to aid the stationary source enforcement program and to implement the New Source Performance Standards (NSPS), indirect source regulations, and new source review requirements in State Implementation Plans (SIP's). NADB has contracted for listings of new sources from "Dodge Reports".4/ A simple source listing, however, is inadequate for enforcement purposes, since the regional offices require more detailed reports on the sources including start-up dates, source size, etc. Conversations between DSSE and NADB were initiated to determine if the enforcement program's needs could be satisfied most efficiently and economically through an expansion of the NADB contract. It was concluded that DSSE initiate its own contract.

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[3] Files should of course be kept on all correspondence and EPA actions such as compliance schedules.

4.11--The Review Group recommends that DSSE and NADB reconsider getting together on a joint contract with "Dodge Reports" in the interest of possible efficiency.

Other Issues

A number of other issues relating to the NEDS system were identified but have not been followed up. These included:

- NEDS source identification numbers can be changed by the States. This can (and has) caused havoc. If it is not possible to stabilize the numbers, it will never be possible to match up CDS and NEDS data.
- NADB does not require States to justify deletion of sources from NEDS. NADB notifies the regions when a source is deleted, but the notification format does not encourage the regions to investigate the deletions.
- The NEDS data on Federal facilities are sparse.
- NEDS does not adequately identify emission points for the enforcment program's purposes.
- A few State inventory systems, designed to coincide with State regulations, are incompatible with NEDS. Thus far, efforts to convert these State data to the NEDS format have been unsuccessful. In these States, as well as most others, NEDS is not highly regarded.

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4 The Dodge Company reports on different stages of new construction. They are available by geographic region and industry category.

- Almost all good State programs have significantly better inventories than NEDS does. The result is a vicious circle: the States do not get much information out of NEDS so they do not spend much effort putting data into NEDS; without local effort to update NEDS, source information is lacking or out-of-date; with the data base so poor, no one ever uses it. The result is that most new NEDS information comes from OAQPS contractors. In several States, the Review Group was told that the NEDS printout was only used to reply to inquiries from EPA.

Summary

Development of emissions inventories is an expensive, time-consuming task to which EPA has devoted significant effort. However, as this section details, success requires greater intra-regional coordination, increased efficiency and guidance from Headquarters, and better cooperation within Headquarters.

STATUS OF COMPLIANCE SCHEDULE DEVELOPMENT

In FY 74 the primary goal of the stationary source air enforcement program was to complete the establishment of compliance schedules[5] for all point sources out of compliance with regulations in State Implementation Plans (SIP's).

That goal was not achieved. Many sources not yet on compliance schedules will not be able to meet their final SIP compliance dates because of inherent time constraints on installation of air pollution control equipment.[6] In addition, even where a schedule has been negotiated, EPA cannot enforce increments of progress until the schedule has been promulgated in the Federal Register; the regulation, however, can be enforced.

This section summarizes the status of compliance schedule development, analyzes the problems inhibiting completion of schedules, and recommends an aggressive effort to finish the task.

In addition, the significant legal problem of handling post mid 1975 compliance schedules is analyzed; recommendations are made for both an interim and a long range policy.

Description of Current Program

The Clean Air Act required EPA to approve (or disapprove and later promulgate) SIP regulations by May 31, 1972. The regulations had to contain the final emission limitations and final compliance dates. The SIP regulations could be immediately effective or have a final compliance date as late as the final attainment date for the National Ambient Air Quality Standards (NAAQS). If the final compliance date was after Jan. 31, 1974, a compliance schedule (a Section 51.15 schedule) specifying incremental steps (contract, start construction, etc.) had to be submitted to EPA by the states prior to Feb. 15, 1973. The increments of progress could be contained in a schedule particularized for an individual source, in a categorical schedule for a class of sources, or in the emission regulation itself. Where the emission control regulation contained acceptable increments (approximately 5,000 sources are involved) individual schedules did not have to be submitted. If the final compliance date was before Jan. 31, 1974, compliance schedules were required only if the final date was unreasonable.

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[5] The term compliance schedules will be used to refer to any of a variety of legal approaches putting sources on a schedule with increments of progress, thereby insuring final compliance with the SIP regulation.

[6] Region IV estimated that one-half to two-thirds of all sources on schedules need equipment.

Section 51.15 Schedules

EPA determined on May 31, 1972, in its initial review of SIP's, that a number of States did not have adequate procedures for obtaining legally enforceable increments of progress. In these cases, the SIP itself was disapproved, and EPA promulgated regulations giving these States adequate procedures for obtaining legally enforceable increments of progress.

Of the 20 States having regulations with final compliance dates after Jan. 31, 1974, only six officially submitted any schedules in a timely manner. Where States failed in their responsibilities to submit compliance schedules, EPA was required to propose and promulgate specific schedules to substitute for those not submitted by the State or not approvable by EPA. An estimated 5,000 facilities were placed on a schedule by these EPA promulgations. Most of these facilities are subject to a categorical-type schedule--that is, a schedule tailored to a class of sources such as asphalt batch plants. In most cases sources subject to this type of regulation were not individually notified. This short-cut approach, enabled EPA to solve a basically legal problem with the SIP's.

Immediately Effective SIP Requirements

If immediate compliance is reasonable, as in the case of fuels-switching (if the fuel is available), or prohibitions on open burning, no compliance schedule is needed since an effective enforcement program consists simply in the initiating of enforcement actions against violators. But, where control equipment must be installed, the requirement to comply immediately may be wholly unreasonable. Instances of non-compliance may be widespread, whether or not the State is effectively enforcing the regulation.

At the beginning of FY 74 the regional offices estimated that some 10,000 point source facilities were subject to presently effective requirements in SIP's and that at least 5,000 of these facilities needed to be placed on a reasonable compliance schedule.

For those sources still not on schedules or in compliance, one of the following mechanisms is used to establish these schedules:

- o The appropriate State or local agency submits schedules to EPA as plan revisions if the compliance date is within the attainment date set by the approved SIP.

- The State or local agency issues enforcement orders establishing schedules, and where deemed necessary submits them to EPA for joint State-EPA enforcement action if the compliance date extends beyond the attainment date in the SIP.[7]
- The EPA issues notices of violations and follows up with an appropriate abatement order.

Table 7 shows the status of compliance schedule development for point sources as of Oct. 1, 1974.

As of Oct. 1, 1974, of the 9,726 point sources estimated to be not in compliance or of unknown compliance status with SIP requirements, 3,891 are on EPA approved schedules; About 1,500 are on State-approved schedules in the process of being formally approved by EPA. The remainig 4,335 identified point sources are either not on a schedule or are of unknown compliance status. Although past experience has shown that probably about 50 percent of those facilities in the unknown compliance category are in compliance, the fact remains that EPA failed to meet its FY 74 goal of completing compliance schedules for all point sources not in compliance. Moreover, the remaining point source facilities not on an approved schedule included some of the Nation's most severe air polluters, including most power plants, steel mills, primary smelters, and municipal incinerators. Thus a major part of the Agency's program in FY 75 will be to complete compliance schedules for these facilities.

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[7] This approach may no longer be useable. See discussion below for impact of court decisions.

TABLE 7

SUMMARY OF POINT SOURCE COMPLIANCE STATUS

BASED ON FY 74 OUTPUT REPORTING

October 1, 1974

EPA REGIONAL OFFICE	Total Number of identified Point Sources	Number in Final Compliance*	Number of EPA Approved Schedules	Number with Action Pending* 1
I	1,064	476 (45%)	130	492 (46%)
II	1,630	804 (49%)	230	673 (41%)
III	2,318	1,542 (67%)	351	624 (27%)
IV	4,923	2,692 (55%)	1,658	931 (19%)
V	1,709[2]	698 (41%)	468	607 (36%)
VI	2,290	1,212 (52%)	64	1,021 (45%)
VII	958	196 (20%)	297	551 (58%)
VIII	455	240 (53%)	140	89 (20%)
IX	1,819	171 (9%)	216	1,609 (88%)
X	988[2]	387 (39%)	337	504 (51%)
TOTAL	18,154	8,428 (46%)	3,891	7,101 (39%)

* Figures in parenthesis are a percentage of the total number of sources for that region.

SOURCE: "National Summary Milestone Report"

Includes: 1) Sources not in compliance and not on a schedule,
2) Sources on a schedule but overdue, and
3) Sources unknown as to compliance status
or as to compliance with increments.

Point source definition based on actual 100 tons per year emitters.

Major Problem Areas

The reasons for the delays in developing schedules are complex and variable. Among the reasons the Review Group identified for failure to complete schedules are:

- Uncooperative or inadequate State programs.
- Poor regional organization.
- Operational problems with Federal Register procedures.
- Recalcitrant or difficult source control problems. Delayed SIP approvals.
- Legal problems with post-75 compliance schedules.

Factors contributing to success in completing schedules included:

- Assigning one individual per state the responsibility of developing compliance schedules.
- The use of high level meetings between State and regional office personnel to discuss EPA's requirements.
- The frequent communication of procedures and legal requirements to States by the regional offices.
- The use of grant constraints, (which worked to greatest advantage in California (Region IX) and Indiana (Region V).
- Use of EPA enforcement procedures when necessary.

Uncooperative or Inadequate State Programs

States had to bear the major burden of developing schedules with the sourcs to meet the FY 74 goal. The fact that many States had basic conflicts with EPA requirements in their laws and programs is the primary reasons for the failure to complete schedules by the end of FY 74.

Many States, particularly the larger more industrialized States with long-established programs (for example, California, New York, and Pennsylvania), resent EPA's requirements for compliance schedules that mandate increments of progress for any schedules extending for 18 months or more. EPA requirements did not always mesh with State variance procedures, which allowed sources to apply for postponement of compliance for up to a year at a time (renewable indefinitely in California), usually on the basis of technological or economic factors. Thus, many States challenged EPA's requirements on compliance schedules and refused to submit them to us for approval. Subsequently, Federal courts have ruled many of the variance procedures used by such States are inconsistent with the Clean Air Act and must be disapproved by EPA. Negotiations with the States are continuing on this point.

Some regions -- Region IV, for example -- blamed some of their difficulties on the fact that EPA modified the regulations on compliance schedules after the region had already completed preliminary negotiations with the States on schedules.[8] This is an example of the broader problem, treated in Chapter VI, of late (or nonexistent) decision in Headquaters that undercut region-State relationships.

Region IV, the region with the most schedules, is fortunate in that it is dealing with State agencies created about the same time as EPA and the Clean Air Act Amendments of 1970. The State law requirements and program development of these agencies dovetailed with those of the Clean Air Act. Other regions with similar State programs, were not as effective in communicating with and assisting the States. Problems arose when a specific individual in the regional office was not assigned clear responsibility for seeing that the States completed their schedules. Some regions with inadequate or uncooperative State programs did not sufficiently use the power of Federal enforcement to stimulate State action. Although some regions--for example, Region IX (California) and Region V (Indiana) were partially successful in using enforcement actions and program grants to obtain schedules, the mechanisms, available were generally not fully used in FY 74. In other instances where Federal enforcement actions were used, they were not always coordinated well within the region to exert pressure on the States to submit schedules. A number of regions (I, III, V, VII, VIII, and IX) did state persuasively that Federal enforcement actions have had great impact on State programs and that results are now beginning to come in. (See Status of Enforcement Effort later in this Chapter).

To improve the State agencies performance in establishing schedules, several steps should be taken.

4.12 -- The Review Group recommends that each region assign one individual the responsibility for completing compliance schedules for a State and that this individual be given the responsibility to advise the State on EPA policy on a regular basis. This same individual should also be responsible for following the State's compliance monitoring program.

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[8] The modifications came out Dec. 9, 1972, for schedules due Feb. 15, 1973.

4.13 -- The Review Group recommends that each region negotiate with each of its States a program to complete compliance schedule development. Monthly or quarterly targets should be considered. The results of this negotiation should be a condition on the State program grant (see Chapter V). The State should be made aware that failure to develop and submit schedules in accordance with the grant constraint would result in a decrease in the State grant and Federal enforcement actions. (This will assure that the States develop compliance schedules as rapidly as possible, or that the regions act to complete schedule development should the States be unsuccessful.)

4.14 -- The Review Group recommends that the States be required to notify individually all sources on categorical compliance schedules unless the source has complied with the first increment of progress -- that is, it has reported.

4.15 -- The Review Group recommends that should a State remain incapable or un-cooperative in submitting schedules to EPA even after selective EPA enforcement actions, the region initiate an effort to complete these schedules using contract funds available from OEGC. (This approach is already being taken by Region VI in Louisiana and Region VIII in Utah, for example.)

Poor Regional Organization

The Review group found that once schedules were developed by States and submitted to EPA, numerous operational problems resulted in unacceptable delays in the review and approval of the schedules. For example, no final schedules had been promulgated in Region V at the time of the Review Group's visit.

At the beginning of FY 74, certain regions established a split responsibility fo developing schedules, with their Air and Water Program Division responsible for assisting States in developing schedules and their Enforcement Divison responsible for the legal review of schedules and appropriate enforcment actions. With few exceptions this arrangement proved unworkable. Most Air and Water Program Division personnel were preoccupied with other matters, such as the development of Transportation Control Plans and the resolution of energy problems. Consequently, review of compliance schedules were assigned a low priority. During the past fiscal year, most Regions--I and V, for example--have reorganized and placed the primary responsibility for compliance schedules in the Enforcement Division. Most of the organizational difficulties in developing schedules seem to have been resolved; therefore, the Review Group makes no recommendations regarding organization.

Operational Problems with Federal Register Procedures

The Review group found that considerable delays occurred in the approval process for compliance schedule published in the Federal Register. Initially, schedules developed by the States and acceptable to EPA could receive final approval by simply being promulgated in the Federal Register. Recently, several courts have found that EPA must give notice of its intention to approve and therby provide the public an opportunity to comment. This process results in a minimum delay of 90 days in final approvals.

Furthermore, the Court of Appeals ruled in the Fifth Circuit, that EPA could not approve any compliance schedules, including those prior to the SIP attainment dates, without going through a § 110(f) proceeding. This delayed formal approval of schedules in several southern States until the Fifth Circuit decision was stayed by the U.S. Supreme Court. These court decisions have now been incorporated into EPA procedures, and no longer are causing delays beyond that necessary for public notice.

The most serious and avoidable delays have occurred in the preparation and concurrence procedures for Federal Register packages. The delays result both from the lax attitude of regional office personnel towards preparation of these documents, as well as from overly detailed Headquarters review. The Review Group believes the more serious problem lies with Headquarters review. First, Hedquarters failed to provide specific guidance to regions for preparing Federal Register packages on compliance schedules. The regions compound this problem by overlooking the general guidance for Federal Register preparation. Although the new procedure of allowing the Regional Administrator to approve Federal Register packages for proposed, state-initiated rulemaking haveeased the difficulties of the past, inordinate delays are still occurring on final Federal Register packages.

As an example, a recent Federal Register package concerning a New Mexico State compliance schedule regulation required signatures on the red border concurrence sheet as follows:

Regional Office -- Air and Water Division Director; Surveillance and Analysis Division Director; Enforcement Division Director; Regional Counsel; Regional Administrator.

Headquarters--Messrs. Greenstone, Alm, Strelow, Kirk, Quarles, and Train.

A central problem with requiring all these concurrences is that it obscures who has the responsibility for getting the job done, both within the regions and Headquarters. Further, the above 11 concurrences represent only the "tip of the iceberg". Within Mr. Kirk's office, for example, the package on New Mexico was circulated to Messrs. Baum, Wilson, Zener, and James. The package was further circulated within Messrs. Wilson's and James' divisions for evaluation by three more individuals who worked with Region VI on developing this package. Thus, this one New Mexico package was reviewed by at least 13 people after a Regional Administrator signed off. These numerous concurrences naturally result in delay.

Headquarters' justification for such careful review is that regions make errors both in policy and format. In point of fact, not a single error was found in the New Mexico package. However, since regional personnel do make errors the Review Group believes that unless the regions are given the clear-cut responsibility, they will never take preparation of *Federal Register* packages seriously.

4.16--The Review Group recommends that the regional offices bear the sole responsibility for the quality and timeliness of their Federal Register packages. Headquarters review should be limited to matters of policy and major substantive issues. Headquarters should consult the regions before making changes. Headquarters should be allowed only a specified period of time (for example, 5 working days) to complete its review. This could be implemented by letting packages go after 5 days unless objections arise, rather than holding them for concurrences. (This will minimize delays, aid Agency decentralization, and force Headquarters to focus more on policy as opposed to procedures.)

In order to implement the recommendation, the Headquarters program offices should provide detailed, written guidance to regional offices on specific format for preparation of *Federal Register* packages for compliance schedules and henceforth not intervene on matters of format.

Recalcitrant or Difficult Source Control Problems/Delayed SIP Approvals

Another major reason for the failure to complete compliance schedules is that EPA underestimated the difficulty involved in placing major air polluters on schedules within a 1-year period. Litigation, particularly by the power, steel, and smelting industries, has resulted in considerable delays in establishing their compliance schedules. While EPA could not have prevented most of the delays by litigation, a more aggressive approach might have permitted EPA to establish schedules for these industries at an earlier date.

Legal Problems with Post-75 Compliance Schedules

During the past year, five circuit courts of appeal have spoken to the issue of compliance date deferrals. Four of these have held that EPA cannot approve deferral of a State-initiated compliance date if the revised date extends beyond mid-1975 (the final SIP compliance date). EPA is in the process of implementing the rulings of these courts on a nationwide basis. Revised regulations reflecting this decision were published on September 26, 1974. Clarifying regulations are being drafted.

Prior to the publication of the revisions, the Agency, on a more or less piecemeal basis, had begun to advise States that State-initiated compliance date postponenments extending beyond mid-1975 were not approval.[9] The Review Group found several State and local programs that were not aware of this problem. Those agencies aware of the problem were unconcerned and they were proceeding under authority granted by State legislation.

While many regional offices are aware of the problems facing them during the post 1975 period, few have received any firm Headquarters guidance on the subject; as a consequence, each appears to be striking out in its own direction. Although some individualized tailoring is necessary, a certain degree of consistency is also necessary.

4.17--The Review Group recommends that OEGC develop a consistent national strategy for post-1975 State compliance schedules.

With present sources, EPA cannot, by itself, do the job of putting all post-1975 sources on compliance schedules. An optimistic estimate (MBO data) indicates that about 900 major sources nationwide will not be able to meet provisions by mid-1975; this does not take into account equipment delays. In addition, to keep with the sprit of the Clean Air Act, maximum participation by the States will be required to accomplish the work remaining. EPA must develop a policy for handling post-1975 sources that will leave the States in the lead as much as possible.

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[9] In the opinion of the General Counsel's Office, under authority of § 113 of the Clean Air Act, the Agency itself may issue enforcement orders with accompanying compliance schedules which extend beyond mid-1975. Legislation to confirm this has been submitted to Congress but has not been acted upon.

The Review Group assumes that EPA: (1) will tailor its policies to the characteristics of the States;[10] (2) would like to use the minimum resources; and (3) would like to encourage public involvement.

4.18--The Review Group recommends that before finalizing an interim or final enforcement policy, EPA inform all the States of the legal problems with post mid-1975 schedules and consult with them on the alternatives.

Four alternative EPA policies to deal with this problem are reviewed in Table 8. The four are:

- EPA assumes direct responsibilities for all point sources out of compliance past mid-1975 and uses the authority of §113 of the Clean Air Act to enforce SIP regulations.
- EPA, using prosecutorial discretion, allows States to handle all sources that they can. Under this option no attempt is to be made to approve or issue joint orders with the State.
- EPA and the State (local) agency issue joint enforcement orders.
- EPA allows States to issue post mid-1975 enforcement orders subject to EPA approval and Federal Register promulgation. (This requires legislation.)

There is one additional alternative, the use of §110(f) of the Clean Air Act. Section 110(f) permits the governor of a State to request a 1-year extension in the final compliance dates if a number of stringent conditions are met. This option is not explicitly considered because of its 1-year limitation (according to OGC opinion) and the excessive resources necessary to verify that its stringent conditions are met.

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[10] The Review Group feels this assumption is critical. EPA must not treat all States in the manner it must treat those refusing to take positive actions.

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ANALYSIS OF ALTERNATIVES POLICIES FOR COMPLIANCE SCHEDULES EXTENDING BEYOND FINAL SIP ATTAINMENT DATE

TABLE 8

Criteria for Analysis Policy Alternatives	Legality	Relative Resources Required	Change in Existing Policy	Delays in Source Compliance	State/EPA relations	Public Involvence	Additional Issues	Assessment
• EPA assumes direct responsibility for all point sources not in compliance by mid-1975; using §113 authority	Legal-legislation has been requested to verify this authority	Significant resources	Change in Policy	Delays likely	Will harm EPA/State relations	Minimal public involvement (See text)	Appropriate policy for problem sources and problem States	Undersirable Policy
• EPA uses prosecutorial discretion allowing states to handle all sources they can; no EPA attentpt to approve or issue joint orders	Questionable legality-being done now for non-point sources preferred by DSSE	Mininal resources	Slight variation in policy. Would require Guidelines for State Enforcement Proceedings	Minimal delay	Minimal impact on State relations	Depends on State approach risks citizen suits (§304)	Sources may be fearful of EPA action after they commit in good faith to a State order.	Possible interim policy
Joint EPA State (local) enforcement orders	Questionable legality legislation has been requested to verify authority	Moderate resources	Very slight variation in policy	Minimal delay	Moderate initial impact. Resources careful presentation to States.	Depends on State Approach	Minimizes adverse impact of EPA enforcement action; may necessitate enforcement conferences if source does not waive it.	Possible interim policy
Allow States to issue post mid-1975 enforcement orders or compliance schedule variances. Subject to EPA approval and Federal Register promulgation.	Legislation required--it has been proposed; one court said it can be done.	Moderate resources	Continuation of existing policy for pre-mid 75 deadlines.	Minimal delay-once legislation passed	Minimal impact on State relations	Maximum public involvement	May appear to be giving in to industry; must be accompanied by an aggressive EPA policy where enforcement states do not take lead.	Preferred policy-but requires legislation

4.19--For sources with post-mid 1975 compliance dates, the Review Group recommends allowing the States to prepare compliance schedules for EPA approval and promulgation in the Federal Register. EPA should continue to advocate passage of the necessary legislation.

Since the recommended alternative requires legislation if it is to be continued past the mid-1975 deadline, it is not immediately implementable (except in the States in the 9th circuit). The major disadvantage of this option is that it puts EPA in the position of conceding that mid-1975 is not really a deadline. In the Review Group's opinion, this charge can be countered by an aggressive enforcement policy against stationary sources.

4.20--In the interim, before passage of legislation, the Review Group recommends that EPA adopt a policy of overseeing State enforcement orders.

This policy is a combination of the second and third alternatives considered above. The States needed to be told that although the Agency could not approve post-mid 1975 compliance schedules developed under the above procedure as plan revisions, it will either countenance them pursuant to its prosecutorial discretion authority or utilize them for §113 Federal enforcement orders. Implementation of this oversight policy will require careful coordination and communication with the States, many of whom regard EPA actions as an intrusion of their rights. At the same time, they should also be advised that EPA wants them to retain the initiative in developing compliance schedules and in holding compliance schedule hearings. And wherever appropriate, EPA will attempt to merely approve the results of State hearings without becoming overly involved in the process. The Review Group recognizes that in discussions with the States on this interim policy it is very likely that improvements or refinements to the suggested alternatives may be developed, particularly with respect to tailoring the policy to individual State programs.

The Review Group does not regard the interim policy as an easy proposition. However, it will, among things, serve to mollify the many State and local agencies that view EPA's involvement in compliance schedules development as an enroachment on their jurisdiction. In addition, in a State like West Virginia, which regards §110(f) as the only means of obtaining post-1975 compliance dates for sources within its jurisdiction, such contacts (which presumably would be on a person -to-person as well as written basis) may serve to ward off a rash of resource-incentive §110(f) requests.

A problem related to post-1975 compliance schedules is how to provide for public participation. All §113 conferences should be open to the public after adequate notice has been given. Beyond this, the issue of actual public participation in such conferences is a "sticky" proposition.

4.21--The Review Group recommends that at a minimu, OEGC examine the question of citizen participation in §113 conferences and give thought to providing interested citizens an opportunity to testify if they so request in writing beforehand. Accordingly, notice should be given of all compliance schedules in at least one local newspaper.

Opening the doors to §113 enforcement conferences will remove any aura of secretiveness about them. It is worth noting that the Justice Department follows a procedure allowing for public involvement prior to entering into any environmental consent decrees. In addition Region IX has no apparent problems, when it provides interested citizens an opportunity to testify at the enforcement conference, if they request so in writing beforehand and if the region believes their testimony would be helpful.

With the public involved, the next step should be to develop uniform, nationwide guidelines for such rule-making. This could be as simple as expanding the technical rules (for example, adequate technical support documents) and substantiative rules (for example, the "expeditiously as practicable standards") which now apply to §110 rule-making. The Review Group understands that DSSE is in the process of preparing such guidelines for publication in the *Federal Register*.

4.22--The Review Group recommends that guidelines be developed informing the public of how decisions are made under §113 and that an operating standard be set which will enable the results of a §113 proceeding to weather subsequent court challenge.

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STATUS OF COMPLIANCE MONITORING PROGRAM

In FY 75 the priorities of EPA's stationary source enforcement program will shift from development of compliance schedules to enforcement of increments of progress in schedules and development of a compliance monitoring program designed to ensure that all sources required to be in compliance with SIP regulations do, in fact, comply. Enforcement actions and litigation by regional offices and States are expected to increase as a result of the shift to compliance monitoring. EPA's compliance monitoring program is intended to turn the paper exercise of compliance schedule development into actual source compliance and to keep sources in compliance once they achieve it.

Compliance monitoring activities include both "paper surveillance" (citizen complaints, State semiannual reports, and source responses to §114 inquiries) and field surveillance (inspections, opacity observations, and source tests). Regional Guidance for FY 75 requires that the responsible State or local agencies verify in an acceptable manner the compliance status of all major point sources. The Regional Guidance also suggests that EPA verify the compliance status of a number of selected major facilities as part of its field surveillance effort to provide an audit on State enforcement. According to the FY 75 Regional Guidance, 10% is a reasonable number of point sources to determine State effectiveness. Of course the percentage of sources investigated by EPA in any single State could vary greatly in accordance with the regional office's assessment of State enforcement. Regional program plan commitments for compliance monitoring activities were generally consistent with the FY 75 Guidance.

For EPA's air compliance monitoring program to be successful, the regions must focus more attention on getting their personnel out to the sources and to State and local control agency offices and on fully utilizing CDS as an enforcement management tool.

4.23--The Review Group recommends that Regional Administrators direct their enforcement personnel to, 1) conduct more source inspections, 2) visit State and local agency offices more frequently and, 3) fully utilize the Compliance Data System as an enforcement management tool.

Regional Field Surveillance Programs

The Review Group found that regional interpretations differed as to the requirements of the FY 75 Regional Guidance for their field surveillance programs. Most regions correctly understand that the guidance to check 10% of the sources reported in compliance is a suggestion. Regions I, IV, and X indicated that because of resource constraints, their commitment to field surveillance actions was a combination of inspections of sources reported by the State to be in compliance and inspections needed to implement EPA case development work or followup on Federal responsibilities.

In several Regions--III and VII, for example--the Review Group found that the regions could not meet their commitment to field investigations unless they improved utilization of their Surveillance and Analysis Division personnel. Most regions could not specify how they were going to identify or choose the sources they were going to inspect.

4.24--The Review Group recommends that each region develop, as soon as possible, a specific surveillance program to define those sources on which field surveillance will be conducted during the remainder of this fiscal year.

> In developing this surveillance program, the regions should give significant weight to their evaluation of their States' compliance monitoring efforts and the relative need for EPA involvement. This requires that enforcement personnel be intimately familiar with State and local air pollution control agencies in their regions. The Review Group believes that regions should give priority to the aspects of the program that would have the most beneficial impact on improving State efforts. Thus, if a State's program is ineffective, there might be little point in verifying data just to prove its inaccuracy, especially if the resources available could be more effectively used to take enforcement action designed to encourage the State to adopt an aggressive enforcement program of its own.

Status of CDS and Problems in Its Implementation

The status of CDS in each region in the second year of operation, is listed in Table 9. The CDS master file includes 10,405 facilities[12] representing about 64% of the total number of point sources for which the regions have made program planning commitments. Table 10 lists the status of overdue increments in schedules from CDS as of Sept. 9, 1974; 38,371, or 90% of the increments listed in CDS, have not been updated by the regional offices and affected States to indicate whether or not the increments have been met.

Table 10 does not give an encouraging picture of compliance with scheduled increments of progress. This is not, however, an accurate reflection of actual progress. The poor record is partially the result of difficulties in implementing CDS. Based on the output commitments of the regions under the MBO system and the results of the national survey, it would appear that approximately 55 to 60% of those sources on compliance schedules are currently meeting increments The status with respect

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[12] Information was provided by DSSE.

Table 9
STATUS OF CDS
(as of Sept. 18, 1974)

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	IDENTIFIED POINT SOURCE FACILITIES 7/1/74 MILESTONE REPORT	CDS FILE		
REGION		TOTAL SOURCES ON FILE	POINT SOURCE FACILITIES ON FILE (%)	COMMENTS
I*	869	921	869 (100)	Data fairly complete; compliance status and increments are being verified by one contractor, updated by another; contracts complete by 2/15/75. Region needs additional personnel to operate system.
II	920	779	779 (87)	Data fair to poor; over half in New Jersey which must be completely revised. No contractor help requested; region has not assigned full-time CDS coordinator.
III*	2371	2396	2371 (100)	Data quality is poor; compliance info. and increments are to be updated by contractor by 12/1/74. Region has not assigned full-time CDS coordinator.
IV*	4664	3524	3524 (76)	Data quality fair; contractor to update increments and comp. status by 2/15/75. No full-time CDS coordinator has been assigned since early '74.
V*	2017	549	549 (27)	Data incomplete; contractors to complete file by 10/31/74. May need addtn'l assistance through Feb. '75. Region has not assigned full-time CDS coordinato
VI*	2108	367	367 (17)	Data quality good; little data available for Texas. Contractor will enter available data and schedules on file by 10/31/74. Increments being updated.
VII*	523	1463	523 (100)	Data quality good; all schedules are on file. Region trying to keep increments up to date. Miscellaneous contractor assistance to be complete by 10/31/74.
VIII*	434	410	410 (94)	Data quality good; contractor to complete file by 9/30/74. Region has not assigned full-time CDS coordinator. Increments mostly overdue.
IX	1690	240	240 (14)	Data quality good; regional CDS coordinator indicates all sources on EPA schedules and approvable schedules are on file. Increments are being monitored and updated. Remaining pt. sources to be entered as enf. actions occu
X*	748	1500	748 (100)	Data quality good; regional CDS coordinator requests training session. Increments are being updated. Misc. contractor assistance complete by 11/15/74.
TOTAL	16,344	12,149	10,405 (64)	Inadequate number of personnel assigned to CDS in most regions. Without thes system cannot operate as designed for those regions. Several regions do not show much interest in implementing system. Remaining sources must be entered.

* Contractor Assistance being utilized.

Table 10

STATUS OF OVERDUE INCREMENTS FROM CDS[1]
September 9, 1974

REGION	#INCREMENTS INPUT TO CDS	INCREMENTS DUE TO BE COMPLETED TOTAL	UPDATED	(%)	#NOT UPDATED	(%)
I	1,219	918	117	(13%)	801	(87%)
II	5,214	4,765	860	(18%)	3,905	(82%)
III	9,004	7,736	144	(2%)	7,592	(98%)
IV	26,113	21,414	782	(4%)	20,632	(96%)
V	2,086	1,216	6	(0%)	1,210	(100%)
VI	1,358	889	210	(24%)	679	(76%)
VII	2,872	2,028	1,051	(52%)	977	(48%)
VIII	1,114	784	128	(16%)	656	(84%)
IX	1,231	719	221	(31%)	498*	(69%)
X	2,690	2,349	928	(40%)	1,421	(60%)
TOTALS	52,901	42,818	4447	(10%)	38,371	(90%)

* Approximately 385 of these 498 are increments from approvable, but still unapproved California State schedules. The status of these increments is unknown and will remain so until the State begins to submit reporting information in Oct. Thus, the actual number of overdue increments is more like 105 or 15%. This may be the case in a number of States in other regions as well.

[1] Prepared by DSSE based on Sept. 9, 1974 status.

to increments of about half of the remaining sources is unknown. Thus, some progress is being made in this area. However, the Review Group believes that the regions must, as indicated in the Regional Guidance, devote more attention to the problem of sources in the unknown category.

Based on Tables 9 and 10 and the Review Group's observations, the following conclusions can be drawn regarding the status of implementing CDS in the regions:

- Five regions have still not finished entering basic source information (name, address, and I. D. numbers) on all point source facilities.
- A number of regions have not coded all available compliance schedules in CDS.
- Of the schedules coded in CDS, 90% of the increments due to be completed are listed as overdue. Only Regions X and VII update increments in an expeditious manner.
- Of those sources without schedules, compliance status information is largely emission data gleaned from the data files. This reflects EPA's lack of information on source compliance.

Table 6 shows the number of sources in NEDS for each State as of early spring 1974. Even at that time, the CDS system contained more sources in some States than were listed in the NEDS system. This situation arises partly from the fact that CDS, in some regions, tracks all sources on schedules even if they are smaller than 100 TPY. This problem is also caused by a lack of intra-regional communication between the CDS and NEDS systems in some regions.

CDS, as currently implemented in the regions, is used to track increments of progress of sources on schedules. The regions, however, have not finished listing all sources of interest to the enforcement program. DSSE has just completed computer programming to allow a regional office to use CDS as a full enforcement management system. Programs are now available to obtain, for instance, a separate listing for all sources in a given State which are out of compliance and not on a schedule. CDS can now identify those sources that have not been inspected in more than a year. Partially due to the previous lack of programming support, the functions of CDS are not understood by some regions. Considering the importance of compliance monitoring to the successful implementation of the FY 75 stationary source enforcement program, CDS must be fully understood and utilized by the regions. DSSE has already provided the regions with guidance and held training programs on CDS. Apparently, these efforts have not been adequate.

4.25--The Review Group recommends that DSSE acquaint the regions with the full potential of CDS and assist them in using it as a full enforcement management system.

It might be possible to utilize additional meetings of working level regional enforcement personnel (as recommended in Chapter VI) to convey this information. The enforcement newsletter and additional guidance could also be helpful in this regard.

Neither the functions of CDS nor its relationship to NEDS are clearly understood by all the States and localities. This is partly understandable, as neither system is yet being fully utilized in the regions, and the States are still responding to the different set of reporting requirements found in the *Federal Register*. The new reporting requirements will require a period of time to be fully implemented.

4.26--The Review Group recommends that DSSE provide additional guidance and direction to the regions to assist them in explaining to the States the functions of CDS, the contributions to the system expected of the States, and the relationship of this system to NEDS.

The Review Group believes that each region requires a single coordinator who will devote as much time (full-time in most Regions) as necessary to CDS. A high-level technical person is not necessary for this function and in fact may not be able to implement it effectively. However, if the responsibility for the system is not assigned to one individual, it will never be properly implemented. In those regions where the CDS coordinator is not located in the Enforcement Division, great care will have to be exercised to see that CDS is fully responsive to the needs of the enforcement program, that all reports are maintained and prepared, and that data are provided in a timely fashion.

4.27--The Review Group recommends that each region assign a single coordinator who will devote as much time (full-time in most regions) as necessary to the implementation of CDS.

Frequency of Reporting

Compliance data must be timely to be of value to an enforcement oriented program office. OEGC and EPA top management have a legitimate "need to know" on a regular basis (presumably not more than quarterly). But the more man-hours spent on reporting, the fewer man-hours will be available for enforcing.

Most effective local agencies track compliance status on a monthly if not a real-time basis. States should be able to learn monthly about status changes from local agencies, at least informally. An experienced State agency should find it useful to review and update a CDS monthly report. Quarterly reporting to Headquarters is frequent enough to enable adequate top management overview, but appeared to the Review Group to be not so frequent as to disrupt the regional office.

The semi-annual reports obviously do not fit with the above pattern for reporting enforcement activity. Not one of the regions enforcement groups expected to have any use for the semi-annual report once the Compliance Data System is fully operational.

Most regions questioned expressed dissatisfaction with current requirements in the semi-annual report on compliance information. They stated that reports were not frequent enough to allow regions to follow States' efforts on monitoring increments in compliance schedules. In addition, the semi-annual reports were usually incomplete, missing altogether, or lacking any format. Region IV went so far as preparing a standard format; only one of eight States followed it. Many regions stated that the entire semi-annual report was completely useless for enforcement purposes. All regions have apparently followed the FY 75 annual program guidance and specified more frequent reporting (quarterly or monthly) as a condition on the State program grant. Most States have agreed to provide compliance information on this basis, even though it is more frequent than specified in 40 CFR 51.7. A few States, notably Pennsylvania do not desire to report so frequently unless 40 CFR 51.7 is changed. Mr. Quarles has issued a policy statement on this matter to the States and committed the Agency to changing the reporting requirements in 40 CFR 51.7. Care should be taken, however, to assure that the Agency will be getting data necessary to track long-term progress.

4.28--The Review Group recommends that 40 CFR 51.7 be updated by OAQPS as soon as possible so that Federal Register and Regional Guidance reporting requirements coincide.

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Demands on the regions for formal reporting in FY 75 are about the same as FY 74. The real disruptive impact is from the extra reports that are often required from the regions. These "one time only" requests come on top of each other to significantly deterioriate a region's ability to carry out the pollution abatement process.

4.29--The Review Group recommends that National Program Managers, particularly DSSE, carefully monitor requests made by their staffs for reporting beyond the Program Planning requirements. On a quarterly basis, each program should reassess its formal reporting requirements to determine where they might be reduced. The regions should use their leverage with the Office of Regional Liaison, the Program Reporting Division, and the Administrator, if necessary, to reduce demands for "one time only" reporting.

Equipment Delays

One of the major problems with achieving source compliance identified by the Review Group is delays in equipment delivery. In one State the Review Group was told that every schedule requiring control equipment would slip. Region IV's Enforcement Branch Chief estimated that 25% of those sources on schedules would not be in compliance at the end of FY 75 because of slippages caused by equipment delays. The hope was expressed that most of these delays will be of short term duration, perhaps 3 to 6 months.

The question arises as to when a region should revise a compliance schedule in response to an equipment delay. For example, if the delay is only with one of the increments and the final date is still expected to be met, some regions are telling the source that the schedule will stand and that the slipped increment will be ignored as long as the final date is met. If the final date is also expected to slip, however, when should EPA revise the schedule - after a three-month, six-month, or a year's delay?

An additional area of concern is the extent to which EPA (or State and localities) should simply accept the excuse of equipment delays. Most effective control agency programs require at least some confirmation of an alleged equipment delay--for example, a letter from the equipment supplier. However, information available to the Review Group indicates that while there is a shortage of parts needed to build control equipment, and that this shortage is part of a national shortage of many fabricated steel parts, the necessary parts to complete installation of a control device are available, at a price. While it is obvious that not all sources can obtain the necessary equipment, it would seem that if they were willing to pay enough, some could get the required equipment in a timely manner.

4.30--The Review Group recommends that DSSE regularly issue updated reports on compliance schedule delays so that the Regions are kept informed as to what is considered a generally "expeditious" schedule.

Engineers in Region III indicated that in order to do their job they were continuously updating their copy of an old DSSE compliance schedule report. This, plus additional contractor help, could serve as a basis for DSSE's update of the report. Region III expressed the opinion that the report requires continual updating due to the constantly changing nature of the supply situtation.

4.31--The Review Group recommends that DSSE provide Regional Enforcement Divisions with guidance on how to handle equipment delays. This guidance should include suggested policy on (1) when a schedule should be revised, (2) what requirement a source should be compelled to meet to document an equipment delay, (3) when a source should be singled out to be pressured to obtain control equipment in an expeditious manner even if this causes some increase in cost, and (4) how to assure that all compliance schedules currently being developed include consideration of equipment delays.

New Source Review

One area of major concern to the Review Group is the enforcement progrm's lack of focus on new sources covered by review procedures under SIP's. In many regions,(for example Region IV) these new sources are not being put into CDS. In addition, sources covered under New Source Performance Standards are, in some cases, not being put into CDS.

4.32--The Review Group recommends that regions modify their programs to implement CDS to assure that all new point sources of air pollution are included.

The Review Group is also concerned that the regions do not monitor the State programs to review the compliance of new sources as required by the SIP's.

4.33--The Review Group recommends that the regions' compliance monitoring programs include a review of State programs to evaluate State compliance with SIP new source review procedures. The regions' field surveillance program should include surveillance of a selected number of new sources.

In the opinion of the Review Group, the Agency must make sure that as new facilities that are potential sources of air pollution are constructed, they comply with applicable emission control regulations. While this is a long-ranged program, it is essential to the utlimate control of air pollution problems and deserves a significant degree of priority. It is easier to control a new plant than it is to retrofit controls.

Frequency of Source Inspections

Several problems with the Agency's definition of a source being "in final compliance" were raised during the Review Group's field visits. First, local air pollution control agencies (for example, Detroit and Puget Sound) pointed out that final compliance was a very nebulous concept. Large sources, particularly those with variable manufacturing processess, can come in or out of compliance very easily. Thus, from the local program's point of view a source is not in final compliance once and for all just because a one-time inspection verifies that it is in compliance. This has several implications; it means that in visiting a source once EPA does not necessarily know whether or not that source is in compliance in the long run. For example, the source may be out of compliance during the visit merely because of a manufacturing upset, or it may be in compliance at that moment but be out of compliance the next day because of a process change. From the perspective of local air pollution control agencies, this means that considerably more frequent inspections are necessary at the major point source facilities such as steel mills, smelters, and refineries. For instance, the Detroit city agency indicated that it is inspecting some portion of the Ford Motor Company's River Rouge Plant every day.

As stated earlier, the present compliance monitoring guidance requires States to verify source compliance yearly and regions to audit about 10% of the States' inspections and to conduct yearly inspections of all facilities that the State does not monitor. EPA's requirements for State and local monitoring activity sould reflect the situtation faced by State and local air pollution control agencies. One set of source monitoring requirements is needed for air programs located in areas exceeding standards (where frequent inspections are necessary to ensure source compliance), and a different set of source monitoring requirements for areas maintaining air standards.

4.34--The Review Group recommends that EPA's FY 76 Regional Guidance reflect the need for more than annual source inspections, by the States or localities, for those sources requiring it in Priority I AQCRs.

The Review Group found that the only agencies effectively monitoring sources were either 1) local agencies, or 2) State agencies which had adopted a regional approach with separate offices spread out over the State. EPA as a national agency (with limited resources) cannot get involved in the necessary day-to-day monitoring of air pollution sources.

Protocol for EPA Source Inspections

Several questions also arose concerning the protocol for EPA inspections. It appears that normally regional offices notify the State in advance and invite representatives to accompany regional personnel on site visits. In some regions, however, EPA personnel deal directly with the source in arranging for inspections. The Review Group found that the States were less resentful toward EPA inspections than expected. Some States desired to accompany EPA personnel, and other simply wished to be informed so that they could respond to any questions raised by the source. However, one State, given advance notice of an EPA inspection, informed the source of the impending visit, and the source promptly stopped operations. Another State gave a source an apparently illegal 10-day blanket variance to "protect" the source from an EPA inspection. While EPA should make audit inspections only after giving the State some advance notice of our intent to inspect facilities in the State's jurisdiction, two different policies appear to be appropriate.

4.35--The Review Group recommends that if the State is uncooperative, it is appropriate to conduct whatever inspections and investigations are necessary without giving advance notice (other than perhaps a day before) to the State. If the State is cooperative with EPA in these actions, it would be appropriate to extend more advance notice so that State personnel can accompany EPA personnel if they want to.

All regions know not to tell an industrial source what day an inspection will take place, but some regions are still giving Federal facilities 2 weeks notice of the date of an inspection. While certain clearances and general arrangements have to be made with Federal facilities, they should not require an extended period of time.

4.36--The Review Group recommends that the regions give no greater prior notice of inspections to Federal facilities than they give to general industry.

Some regions are still unable to get official EPA credentials for inspectors over a year after the problem was orginally raised. The authority to sign credentials for fuel inspectors has recently been delegated to the Regional Administrators.

4.37--The Review Group recommnds that authority to sign credentials for all inspectors be delegated to the Regional Administrators.

Utilization of S&A Division Personnel

The Review Group interviewed personnel from all 10 regional Surveillance and Analysis (S&A) Divisions. Until this past year many S&A Divisions had no air program to speak of. A number of problems were discovered as to the adequacy of the Division's equipment, resources and training. Of greatest concern to the Reviw Group was the apparent attitude of many S&A Divisions which gave water-related work a higher priority than air-related work. In part, this reflects the training and orientation of S&A personnel, ratherthan any particular bias against the goals of the air program. For example, one region noted that it would start doing some air inspections in the winter when it was inconvenient to take water samples. It did not occur to the S&A people that it would also be inconvenient to take air samples in the winter. The Review Group believes that regions will not meet air program goals unless S&A Division directors and personnel place a higher priority on the inspections and investigations to which they are committed.

It was also clear that a key problem was the lack of air personnel in certain S&A Divisions. Frequently, air assignments were given by allocating some (often a small prcentage) of a water man's time to air program work. S&A Divisions with a separate air investigations and inspections group (for example, Regions V and IX) were the most responsive to air compliance program needs.

4.38--The Review Group recommends that all regions consider forming air groups in their S&A Divisions and assign them clear responsibility for air outputs assigned to the S&A Divisions.

One region pointed out that inspectors could not use the existing air inspection manual, apparently because of its bulk.

4.39--The Review Group recommends that DSSE review the usefulness of its source inspection manual based upon inputs from the regions and then modify the manual accordingly.

STATUS OF EPA ENFORCEMENT EFFORTS

The past year has witnessed a marked escalation in the number of EPA enforcement actions. FY 75 promises a continuation of this trend. (See Table 11). This increasing number of actions is, in part, due to pressure provided by the mid-1975 attainment date for achieving the National Ambient Air Quality Standards (NAAQS) and the improved capability within the regions to investigate and carry forth such actions.

The development of and the dependence on State capabilities is an integral part of the Clean Air Act. Consideration of State relations, however, must be balanced with the legal requirements of the mid-75 attainment dates of the Act. State or local enforcement actions should be initiated against sources (1) not in compliance and without a schedule, or (2) with a schedule, but not meeting the increments of progress. Federal enforcement of emission regulations is necessary where the State or local agencies are unwilling or unable to bring a source into compliance.

This section deals with many problem areas in enforcement. Alternative regional enforcement strategies, their weaknesses and strengths, are discussed. Priorities of EPA enforcement actions and the use of various enforcement tools are also treated. Finally, such procedural obstacles as conflicting regulations are analyzed.

Table 11
EPA ENFORCEMENT ACTIONS*

Regions	Total Enforcement thru 7/15/74		Program Plan for FY'75
		( ) No. thru 7/15/73	
I	52	(14)	50
II	12	(0)	70
III	41	(4)	132
IV	9	(0)	100
V	99	(5)	70
VI	2	(0)	130
VII	27	(5)	15
VIII	18	(0)	70
IX	50	(0)	40
X	11	(0)	20
TOTAL	321	(28)	697

* All notices of violation, administrative orders, civil and criminal actions.

Enforcement Strategies

A rational, prioritized air compliance program would concentrate its initial enforcement activities on the industries furthest out of compliance located in areas with the worst air (attributable) to the non-complying industry) and with the greast population-at-risk. It would gradually expand its focus until all sources were brought into compliance. Optimally, EPA's enforcement program would combine this scheme of prioritization with that combination of actions which will result in the States (or localities) taking the lead in the air compliance program.

Assessment of Prioritization of EPA Enforcement Actions

In an effort to quantitatively determine if the regions were prioritizing their enforcement activity, the Reviw Group analyzed the distribution of 82 enforcement actions 12/ according to the priority rating of its Air Quality Control Region(AQCR) and the magnitude of the actual violating emissions. The raw distribution of the actions are presented in Figure 1. This distribution, however, is not corrected for the distribution of all sources by size or AQCR priority.

Figure 2 corrects for some of the bias. It tabulates 68 cases involving violation of particulate standards according to Priority I, II, or III, as in Figure 1. This time, the percentage of facilities in each of the priority categories is also given. Figure 2 shows that 75% of enforcement actions occur in Priority I areas, while 62% of sources occur in such areas. It would seem, however, that an even greater percentage of EPA's enforcement actions would be in Priority I AQCR's if the "rational" strategy described above was being followed. The distribution of enforcement actions, however, may be partly due to the combination of motives behind them as numerated below.

12/ The sources included are those among EPA's 275 actions as of last spring which were in violation of a specific critieria pollutant (many enforcement actions were based on procedural violations) and which were listed in the most recent NEDS printout (which is still incomplete).

FIGURE I

DISTRIBUTION OF SELECTED EPA STATIONARY SOURCE ENFORCEMENT ACTIONS BY AQCR AND SIZE

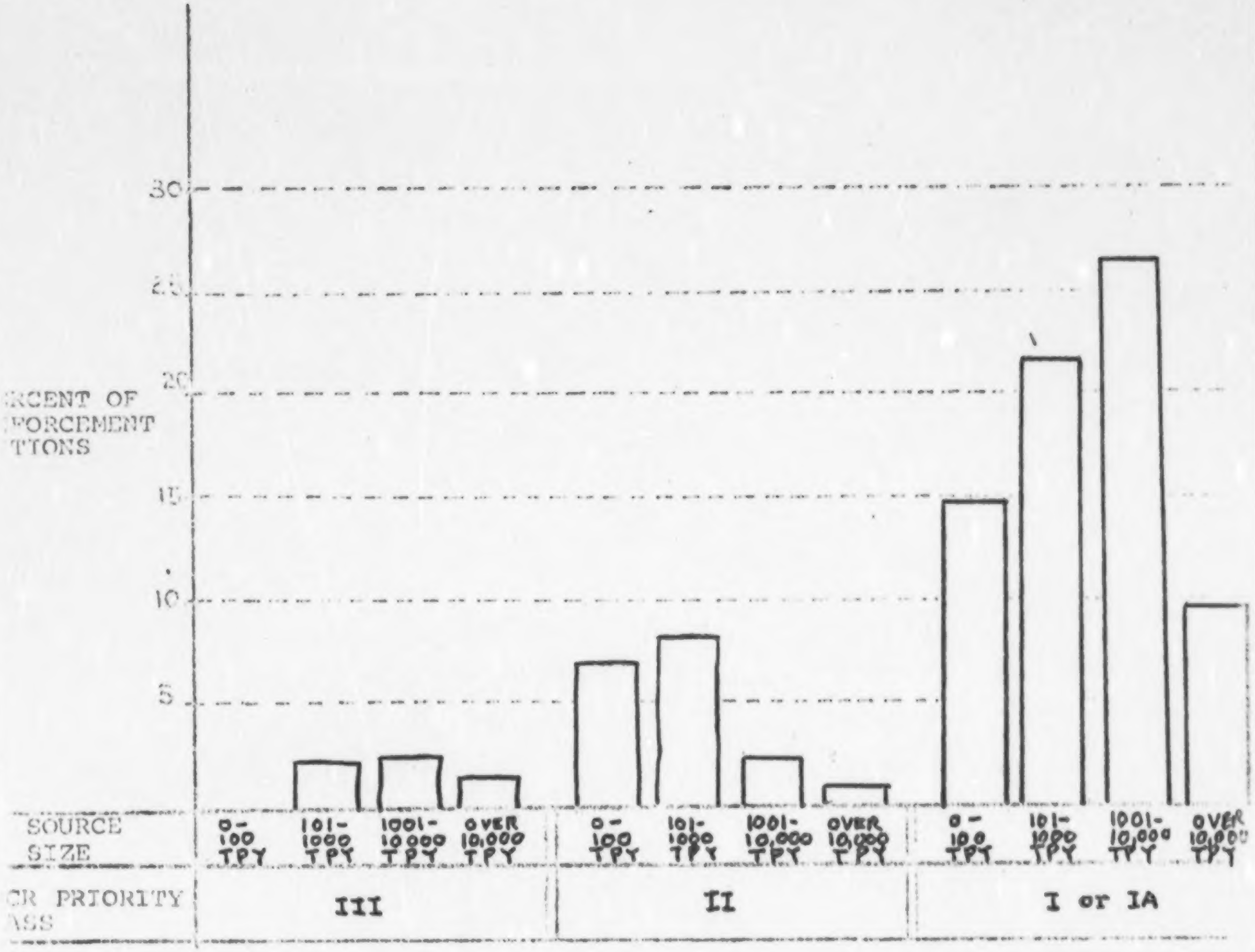
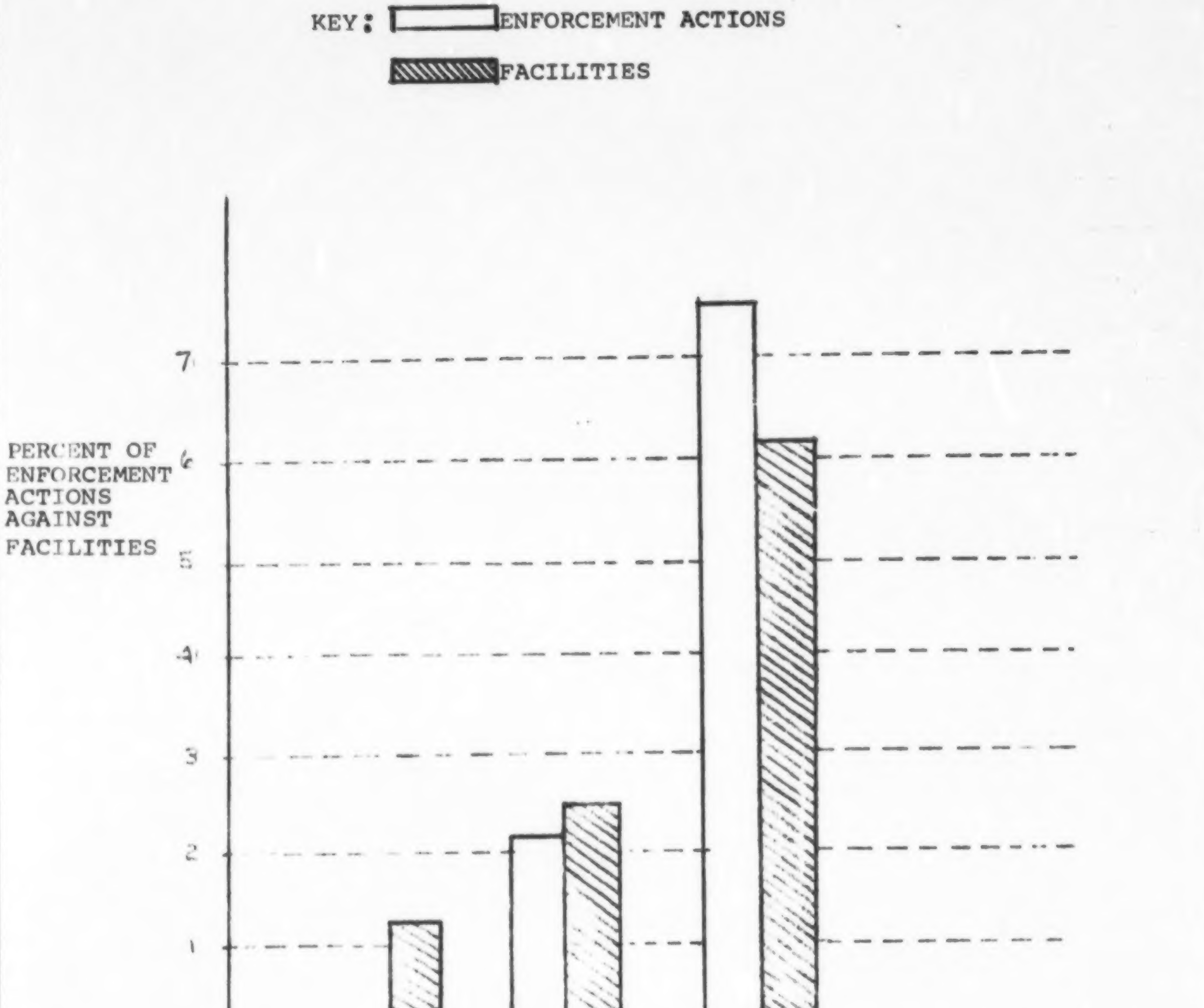


FIGURE II

DISTRIBUTION OF TSP ENFORCEMENT ACTIONS AND NEDS FACILITIES BY AQCR PRIORITY



Regional Enforcement Strategies

In practice, EPA has (1) incomplete emissions inventories, (2) incomplete ambient air monitoring data (available only a year and a half after-the-fact), and (3) an imperfect understanding of air pollution transport modeling. Thus, the optimal strategy cannot be implemented. Different regions have worked out different strategies based on different assumptions. The range of strategies includes:

Strategy One: (domino effect with industries) Here, effort is put into making a tough test case in each major industry category. The theory is to bring the industry leader into compliance and all the rest will follow. While there are indications that this strategy works, there are certain flaws. First, the enforcement effort is not necessarily targeted where the air is poorest. Secondly, the industry leader may not be the best source for a test case, or may not even be in violation. One region applying this strategy was actually focusing on a source that was, at worst, only marginally in violation.

Strategy Two: Make an example for the State and local agencies either, by pushing and embarrassing the State agency, or by helping it with the tough cases.

Strategy Two (A): No State agency really appreciates Federal enforcement activity within its borders. Several States not oriented to enforcement have been pushed into action by seeing the regional office take on a group of noncomplying sources. The lesson ("See, it can be done") is combined with the threat ("If you don't enforce, we will").

Strategy Two (B): In other States, regional, State, and local offices have developed a partnership. This sort of coordination works well for both the State and the region, but it is obviously a very diffult balancing point. This balancing point can only be sustained if lines of communication remain open. Also, the priorities still must be considered.

Strategy Three: The region enforces against all violators. There is at least one region that thinks it can do everything that comes in. This apparently results from either over optimism or naivete. Not one of the 10 regions has the luxury of not needing to assign priorities.

Strategy Four: This strategy is a structured variant of Strategy Three. In two regions the majority of the compliance effort is focused on a single, State, and every major source is investigated (usually by contractors). The investigations are followed up with enforcement actions as necessary. This saturation campaign approaches the resource and attention demands of a "period of Federally assumed enforcement" as described in Section 113(a) (2) of the Act. This sort of a blitz may be the only choice in some cases. However, it may drain all the region's resources from the other States. One region with a blitz in one State was unable to fulfill its share of a partnership strategy in another State.

Strategy Five: The low-profile strategy consists basically of leaving the State alone. This is the best strategy if the State has a complete inventory, with all sources in compliance or on an enforcement schedule. Too often this strategy is applied by default to States that cannot fulfill the requirements of the Act on their own.

Strategy Six: This is a national industry strategy DSSE's power plant strategy is a case in point. Certain nation-wide industries with a major impact on air quality generally have a poor record on compliance. The theory is that by focusing on all facilities of an industry at the same time, no one facility would be tempted to continue to resist, and once started the momentum of the strategy would clear up the biggest problems. The theory also assumes consistent treatment for all firms across the country. While the basic strategy of uniform national action is sound, there can be certain difficulties. The first is that a uniform national strategy may not fit regional strategies or priorities, except for a few of the larger source categories. Second, a region may be pushed into enforcement actions with great resource demands from litigation. Third, a uniform strategy may not effectively exploit the very real difference between facilities within an industry.

Strategy Seven: The lawyer's best-case strategy underlies many of the other strategies. There are two motivations behind this strategy: (1) the desire to make the strongest legal precedent for implementation of the Act, and (2) the real or imagined pressure of the MBO enforcement actions "quota". The problem with this strategy is that making the best case does not necessarily mean attacking the worse polluter in the area with the dirtiest air.

All these strategies have their advantages and disadvantages, and combinations of them are used in the different regions. The Review Group believes,as stated in the Regional Guidance, each region needs a coordinated enforcement strategy; that the capabilities and efforts of the individual States, the number of sources in the region, and the air quality, should be taken into consideration before determining if any one approach is the best for a specific region or State. EPA's enforcement efforts must be ranked to acheive its goals, and even though the number of enforcement actions will be limited due to resource constraints, EPA must be aggressive to attain and maintain credibility and encourage voluntary source compliance and state enforcement efforts. Too many regions have a random approach that wastes resources and may not attain goals as soon as possible.

4.40--The Review Group recommends that each region set aside time each quarter to evaluate, improve, and update its specific State and regional enforcement strategies. The strategies should be prioritized to achieve the NAAQS as soon as possible, and to achieve source compliance with the SIP's. States (or localities) should be kept or placed in the lead wherever possible.

There are two areas in which the Review Group believes that the regions could use additional general policy guidance on strategy. First, it was evident that many States and localities are leaving to EPA the enforcement of air pollution regulations against State and municipal sources. DSSE should develop options for returning enforcement of these types of sources back to State and local agencies.

4.41--The Review Group recommends that DSSE provide the regions with guidance on encouraging State and local agencies to enforce against State and municpal sources.

Second, based on the experience of Region III, OEGC should provide increased guidance if other regions are faced with Section 110(f) requests. In general, OEGC should be providing the regions with policy guidance prior to the time they have to make decisions, rather than leaving the regions in the lead as was apparently done with the Region III Section 110(f) hearing. The guidance of course should be flexible enough to handle contingencies in the admittedly new areas.

Enforcement Tools

The enforcement tools available to EPA's stationary source enforcement program include:

- Section 114 - Letter
- Section 113 - Notice of Violation
- Section 113 - Conference
- Section 113 - Enforcement Orders
- Section 113 - Civil Action
- Section 113 - Criminal Action
- Section 304 - Citizens Suits
- Public Affairs

Section 114

§114, the data collecting section of the Act, authorizes EPA to require any owner or operator of an emission source to supply all relevant information necessary: (1) to determine whether a source is in violation of any standard or requirement of a SIP, (2) to develop or assist in the development of any SIP, standard of performance, or emission standard, and (3) to carry out actions in emergency episodes. §114 also authorizes EPA to enter and inspect a facility (that is, perform an opacity reading), to stack test or require the source to stack test, to install and use monitoring devices and to require the maintenance of records.

Some regions are making incomplete and ineffective use of §114. For example, after evidence of a violation is documented in a response to a §114 letter ("paper surveillance",) a few regions fail to inspect a plant prior to the enforcement conference. Such failure may result in a regional office having an incomplete and inaccurate basis for its enforcement conference.

4.42--The Review Group recommends that a plant inspection should be an integral part of every enforcement action.

A second problem directly impacting EPA's public image is that EPA has in some instances failed to advise affected persons, that is, the State, or local agency, that a §114 letter has been mailed, by whom the letter was issued, and what response is required. Even though there is no statutory requirement that EPA send such a letter, it is a courtesy that should be followed to prevent confusion and expedite compliance.

4.43--The Review Group recommends that the regional offices should take the appropriate steps to guarantee that all affected persons are advised of the issuance of a §114 letter and what is required. Use of a checklist of required steps in issuance of a §114 letter would be appropriate.

Once a §114 reply has been received and evaluated, a source deserves the courtesy of being informed if no further action is intended on the basis of the information supplied. A letter to the source is more than a courtesy, it "closes the case" for the specific §114 inquiry. Such a letter does not prohibit EPA from reinvestigating the sources compliance situtation at a latter date.

4.44--The Review Group recommends that regions acknowledge all §114 replies and inform the source if no further action is intended on the basis of the information supplied.

All efforts should be made to use §114 more effectively as an enforcement tool. A little ingenuity in its use can result in voluntary compliance, the early submittal of compliance schedules, or the voluntary admission of violations.

Section 113 - Notice of Violation

§113(a)(1) states that the EPA Administrator, on the basis of any information available of a violation of any requirement of a SIP, shall notify the person of said violation. In addition to advising the the source of specific violations, the notice advises the source of the alternative enforcement remedies available to EPA and provides both the source and the State a 30-day grace period to come into compliance or take steps (that is, issue a compliance schedule) to bring the source into compliance. Any substantive or procedural defect in the issuance of a Notice of Violation could undermine subsequent compliance efforts for a particular source.

Several Regional Administrators (RA's) have not delegated their authority to sign §114 letters or Notices of Violation to the Enforcement Division Director. By retaining this authority and by requiring concurrence by every division and staff office, even in routine cases, the RA can delay enforcement up to a month. The RA should, however, be routinely informed of the status of enforcement cases in his region and, in a few select, significant cases he should actively participate and sign the Notice of Violation.

4.45--The Review Group recommends that, to expedite the vast majority of EPA's enforcement actions, the authority to sign Section §114 letters and §113 Notices of Violation should be delegated to the Enforcement Division Director.

The Enforcement Division should have the full responsibility to assure that all intra-regional coordination was accomplished prior to issuance of a notice.

In addition, a checklist, should be used to guarantee that all affected parties are advised of EPA's action prior to when the §113 notice is placed in the mail and alerted to the effect of the issuance of the notice and the next step in the enforcement procedure.

4.46--The Review Group recommends that DSSE distribute a sample checklist for §113 notices to assure full involvement of the States.

Section 113 - Conferences

Every notice of violation includes a reference to the §113(a)(4) requirement that the source has a right to confer with EPA concerning the alleged violation. This right can, of course, be waived, but all waivers must be in writing for the official record. The conference affords the source the opportunity to present information bearing on the finding of violation, the nature of the violation, and the efforts taken to achieve compliance. Its most important function, however, is the opportunity to discuss with the source the means they propose to achieve compliance and an appropriate time schedule to implement this program. The conference should and can be a significant basis for subsequent action

Certain regions use the conference as an opportunity to collect data supporting an administrative order. The Office of General Counsel has clearly stated that the conference is not to be used as a data collection device; this function is to be handled only under §114.

Section 113 - Enforcement Orders

If a violation extends beyond the 30th day after the date of the EPA's notifiction, EPA may issue an administrative order requiring a source to comply with the requirements of a SIP. A §113 order must take into consideration the seriousness of the violation and any good faith efforts to comply with applicable requirements. It must also state with reasonable specificity the nature of the violation and specify a time for compliance which the EPA determines is reasonable. No matter what else the final version includes, these four basic requirements must always be considered and drafted into an order.

The actual format of a §113 order will be dictated by what the circumstances require according to DSSE. By stating that "Format of a §113 order will be dictated by what the circumstances require", DSSE limits its review of orders to substantive issues. Many regions complained that the majority of DSSE comments on orders concerned trivial issues of style and format.

4.47--The Review Group recommends that if DSSE is concerned about style and format of §113 orders, it should issue a "cookbook"; if it does not wish to do so, it should limit its comments to policy questions, or waive concurrence entirely. (Waiving of concurrence is recommended below.)

The regions are utilizing four basic types of §113 orders, each issued for a specific purpose. The formats are as follow:

Administrative Orders. Under §113, EPA issues the standard administrative order without approval of the source. The fundamental weakness of this order is that court challenges are more likely than with a negoitated order. The main advantage, however, is that is is expeditious, since there are no lengthy negotiations with the source over the terms and wording of the order. This type of order will of necessity be issued for most sources since it saves time and resources.

Consent Order. The consent order is a §113 administative order to which a source agrees in writing. Drafting and signing of a consent order is generally a time-consuming procedure because of the negotiations that are necessary before agreement is reached. Nevertheless, a consent order significantly reduces the likelihood of any subsequent court challenge because the source has agreed to the order. Regions I, III, V, IX, and X have had significant success with consent orders, and they have been received fairly well by the industrial community. To complete the terms of a consent order, the region might have to include a force majeure clause and lossen up the compliance schedule time frame a little. This, of course, is not the situation with an administrative order.

Agreed Order. The agreed order is a §113 order that a source receives in draft form as an attachment to a notice of violation. The source is advised that if it agrees to the terms of the draft order, it should waive the conference and it will be issued this order. The agreed order expedites placing a source on a schedule by eliminating the need for a confeence. In addition, this procedure also brings the source to agree to the issuance of such an order. The experience to date with this procedure indicates, however, that the use of an agreed order is primarily effective with smaller sources. This method is also effective with those sources already taking steps towards compliance.

Matching Order. Under §113, both the State and EPA issue approximately the same order. This order is most appropriate where final compliance is called for after the mid-1975 attainment date. Although the matching order has many of the disadvantages of the regular administrative order, it does not disrupt EPA-State relations; EPA's issuance of an order is really a symbolic gesture to ratify the State's post-mid-1975 compliance date, since EPA retains the statutory authority to enforce such orders. Region III has some good recent experience with matching orders.[14]

Matching orders may also be agreed to by the source (as described under agreed order). This may complicate the negotiations much more.

Section 113 - Civil Action

§113(b) provides that if a person continues to violate a SIP requirement more than 30 days after notification by EPA, a civil action may be initiated in the appropriate district court to obtain a permanent or temporary injunction. The injunction requires a source to achieve compliance with a SIP requirement by a specific date. The action would be initiated instead of issuing an EPA administrative order. In addition, a civil action can be initiated if a source fails to comply with the terms of an administrative order issued pursuant to §113.

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[14] See the discussion of post mid-75 compliance schedules in the previous section.

At this time, the civil action is not the most expedituous means to bring a source into compliance with a SIP requirement, primarily because there is a long delay in obtaining a trial date in the Federal court system. In addition, formal rules of procedure and evidence are applicable. Besides being very complex, the rules allow a source to delay making a corporate commitment to come into compliance.

A major weakness in the Act is the lack of a civil penalty for a source that continues to delay a hearing on the merits or keeps extending negotiations on a possible consent decree.

4.48--The Review Group recommends that §113(b) of the Act be amended to provide for civil penalties so , if deemed appropriate a source can suffer penalties for delaying a civil proceeding.

Another problem with initiating a civil action is that EPA is represented by the Department of Justice in any litigations. Justice usually requires a comprehensive litigation report to familiarize itself with a case's history. Such a report drains resources from the regional office's enforcement staff.In addition, introducing another agency gives a source another opportunity to delay compliance and to seek more favorable terms.

4.49--The Review Group recommends that EPA petition Congress to amend §305 of the Act to give EPA litigation authority.

The only advantage of a civil action is that a court order results with contempt provisions if a party fails to comply with the order. However, in many instances a judge may subsequently decide that even though he ordered a source to comply by a certain date, the technology needed is not presently available. Thus, even if it is possible to get a satisfactory civil action, it may not be possible to make the terms stick.

Section 113-Criminal Action

§113(c) provides that criminal penalties are applicable for a "knowing" violation of any requirement of a SIP more than 30 days after notification of such violation. To achieve a conviction, the United States must prove its case beyond a reasonable doubt. Accordingly, the Review Group concurs with present strategy of considering criminal actions only in those cases where a source is extremely delinquent and exhibits continuing bad faith.

As of September 4, 1974, EPA had referred a number of enforcement actions to Justice for criminal action, six have now been initiated after a 5-6 month delay.

4.50--The Review Group recommends that until EPA can obtain statutory authority to provide for civil penalties, OEGC request Justice to reconsider initiating simultaneous civil and criminal actions against selected sources.

This strategy would both penalize a source for inaction and still obtain a Court order requiring compliance with a SIP requirement. The main drawback is that the Department of Justice believes the Supreme Court has forbidden such proceedures. OEGC should take an in-depth look into this problem to find a potential solution.

Section 304 - Citizens Suits

A citizens suit is not EPA enforcement, but it does concern the public's right to initiate a civil action against a source or against EPA to bring a source into compliance with any SIP regulation. §304 imposes procedural obstacles which must be hurdled before a citizen can in fact file a suit --for example, 60 days notice must be given to the Administrator. Citizen suits are time consuming and have the same weaknesses as do EPA civil actions, but they do allow the citizen to take action where they feel EPA and the source have been delinquent.

As far as the Review Group knows, §304 has not been used extensively to bring sources into compliance with SIP regulations. However, it is one key argument for requiring formal EPA approval of compliance schedules in instances where the effort of promulgation seem unwarranted.

Public Affairs

A strong public affairs program to encourage voluntary source compliance and aggressive State and local programs has been underemphasized. Press coverage, of course, must not interfere with a source's right to due process in an enforcement action. However, one Enforcement Division was going all out in an uncooperative State and needed additional leverage on the State program. Yet, the region's Public Affairs Director was unaware that a major effort was going on. Regions often do not use the pressure of publicity to push State and local program's into a more active enforcement posture.for fear of upsetting State and local programs. When there is press coverage, it is often confined to negative items like fines or court cases. However, some exceptional positive stories on Louisville Gas and Electric and on Kaiser Steel in California have had a beneficial effect.

Accentuating the positive aspects can greatly assist an enforcement program's momentum. Many regions get good coverage of their programs through a newsletter with wide distribution. Whatever a region's strategy, there must be coordination between Public Affairs, the Enforcement Division, and others involved in air compliance.

Awards. Several public affairs directors suggested that, to give positive feedback, EPA should have a certificate of award for sources when they come into "final compliance". Regional Enforcement Divisions oppose this idea. They believe that an award from EPA could cause firms to reduce antipollution efforts and possibly to fall out of compliance. While positive feedback should be an integral part of any public affairs program, a standard award would place too much emphasis on the initial achievement.

4.51--The Review Group recommends that Headquarters Public Affairs, in conjunction with DSSE, develop alternatives to provide positive feedback to industries, where appropriate.

4.52--The Review Group recommends that the regional Enforcement Division Director and Public Affairs Officer should at least quarterly update the publicity strategy for air compliance.

Enforcement Procedural Obstacles

Section 307 Challenges

A major deterrent to enforcing SIP regulations has been challenges to portions of the plans as allowed under §307(b)(1). Prior to mid-1974, the Agency, assuming an expeditious review by the court of appeals, took the position that enforcement action should not be initiated pending a decision in the case. This assumption has proven untrue in many instances. Accordingly, the Agency has changed its position on §307 enforcement actions to allow enforcement where challenges are pending. This position of course, subjects the Agency to motions to stay enforcement pending the decision. The approach, however, will more than likely expedite a decision on the merits by the Court of Appeals.

Chain of Custody

The chain of custody procedure must be followed in gathering evidence so that it will be admissible in a court proceeding. Although most regions know this, many States do not.

4.53--The Review Group recommends that the Office of General Counsel, with OAWM's assistance, should present all regional offices and State/local programs with guidance on chain of custody and standard business procedure.

The document should be written so that an engineer or environmental specialist will understand how to go about developing evidence. The final version should state that this procedure is to be followed in every case and no corners are to be cut. In addition, it should stress that the procedure is to be followed by both EPA employees and EPA contractors.

Constraints Related to SIPs

EPA's stationary source enforcement efforts are either delayed or stopped completely if (1) there is no SIP regulation for a source, (2) the regulation is in the process of being changed, (3) the regulation is subject to different interpretations or (4) the SIP is internally inconsistent or out-of-date. Examples of all these situations currently exist.

No Regulation. EPA has not yet resolved a number of significant SIP related issues--for example, fugitive dust and supplementary control systems.[15] The lack of policy on these problems means that often there are no set regulations for sources in areas exceeding primary standards. Consequently, EPA's enforcement program can take no action to bring the sources into compliance in these areas.

Regulation Changes. The enforcement program is significantly affected by changing regulations. It would like to have one set of regulations that it could enforce without having to consider how carefully the regulation is fitted to the impact of the source on air quality. But the regulations keep changing. First, States can modify their SIP regulations if the revision is consistent with Clean Air Act requirements. Although this can be confusing to enforcement personnel, EPA can do nothing except warn enforcement programs to confirm suspected violations with the appropriate State agency.

Second, and more perplexing to the enforcement program, are those cases in which EPA is pushing to have regulations changed. For example, under its Clean Fuels Policy, EPA is attempting to get the States to modify their regulations where they are overstringent. This greatly complicates EPA's enforcement efforts.

Most regional enforcement programs would like to deal with a total power system in a single group of negotiations rather than deal with sources on a plant-by-plant basis. If the Clean Fuels Policy were to be strictly implemented, EPA would have to deal with each plant individually. Yet, at least one region visited by the Review Group is dealing with power plants on a systemwide basis. This may result from a poor understanding of what the Clean Fuels Policy means for enforcement.

4.54--The Review Group recommends that DSSE, OAQPS, and Office of Planning and Management review the implications of the Clean Fuels Policy for the enforcement program and inform the region's Enforcement Divisions of their conclusions and the action the regions are expected to take.

15/ The State Air Pollution Plan Progress Report, January 1 to June 30, 1974, EPA-450/2-74-013, provides an overview of SIP promulgation status

One possible reason for regions not implementing the Clean Fuels Policy is that OAQPS guidance for this policy goes out to the RA's and the Air and Water Division Chiefs, but often does not get to the enforcement program. This type of problem was observed repeatedly in the regions.

Confusing Regulations. Region V has had problems with a States interpretation of regulations. For example one SIP does not explicity define "process weight". This led the States to take the process weight of a spraying operation to be the weight of the locomotive rather than the weight of the paint used. Region V and other regions are also frequently unsure of the reasoning behind many of the EPA approved SIPs Region V is now willing to accept State interpretation of the regulations. They leave it to the Air Program to assure that the States interpretation will still allow NAAQS to be achieved.

4.55--The Review Group recommends that DSSE in conjunction with OAQPS, provide guidance to the regions in dealing with problems of dual interpretation of SIP regulations and encourage the regional air programs to seek clarification of the SIP as rapidly as possible. Regional offices should assure that clarification does not endanger achievement of NAAQS.

Internal Inconsistencies. SIPs can hinder the enforcement program because of two other types of inadequacies: plans being internally inconsistent, or the plans, as known by the Region being out-of-date. Region I had its Surveillance and Analysis Division carefully review its SIPs to check for conflicting definitions and other inconsistencies. This review turned up some inconsistencies that, if unresolved could allow a source to challenge the SIP regulations in court. Although no other regions have attempted this kind of review, they have in many cases evaluated the plans legally.

4.56--The Review Group recommends that all regions carefully review their SIP's to assure that they are internally consistent.

The Review Group found that most SIP are not maintained in an up-to-date, organized fashion. Region VII is planning to let a contract of $10,000 to update and prepare 50 copies of one SIP. This contract offers an idea of the complexities and magnitude of the task involved in maintaining a complete and up-to-date SIP. Several regions state that it was not worth their effort to continiously maintain the SIPs. From enforcement's point-of-view, the key aspect of a SIP is the regulations section. Apparently there are fewer problems in maintaining this section than in maintaining the total package. The enforcement programs ran into a problem where the State had revised the regulation, but EPA had not yet officially promulgated its approval of the change. This left the regions with a question as to which regulation to enforce. Although this is not a major problem, it could be resolved by speeding up EPA's regulation approval-disapproval process, a topic addressed in Chapter VI.

One region indicated to the Review Group that in at last one State it was not receiving all SIP revisions.

4.57--The Review Group recommends that the regions put the necessary effort into keeping an up-to-date record of all SIPs including complaince schedules, modifications, etc.

Conflicting Regulations. In a number of cases the stationary source enforcement program is subject to conflicting if not contradictory regulations. Some of the conflict areas are solid waste disposal, waste water discharge, and energy production. For example, the Review Group found that in New Jersey, there is often a problem with solid waste disposal, particularly hazardous materials, when an open dump is closed. In another State, a new source was caught between conflicting State air and water regulations. Presently, there is no formal mechanism within EPA for handling such problems, and a thorough review of this issue is needed.

Federal Energy Administration Regulation 215, which restricts the types of petroleum products that can be used by fuel-burning sources is a specific example of a conflicting regulation. The Review Group found that this regulation is hampering regional and State enforcement programs (particularly in Regions I and III) because it blocks a very important avenue of compliance, the burning of low sulfur fuels. OEGC is exploring the possibility of a compromise which would not place such a great burden on the enforcement program.

4.58--The Review Group recommends that OEGC make every effort to persuade the Federal Energy Administration to amend Regulation 215 or to adopt a national policy alleviate difficulties being experienced in the regions in obtaining source compliance by power stations and commercial/industrial boilers.

V. RESOURCES

The resources available to EPA's stationary source air enforcement program include 298 positions in the regions and $48 million a year in §105 Air Pollution Control Agency Grants. The adequacy of the EPA resources is addressed in the first part of this chapter; §105 grant usage is assessed in the second part. Two major conclusions flow from this analysis:

- Regional stationary source enforcement programs need 13 additional positions for use in the areas studied by this review.
- There is a need for OAQPS to strongly reaffirm EPA policy that program grants are to be used to achieve Agency goals and that regions are expected not only to set conditions on grants but also to withhold payment where recipients do not meet grant conditions.

The review Group's resource recommendations were reflected along with other inputs, in the FY 76 budget the Agency submitted to the Office of Management and Budget.

REGIONAL RESOURCES

The functions of the Regional stationary source air enforcement program are:

- State Implementation Plan Point Source Compliance
    - Compliance Schedules
    - Compliance Monitoring
        - Paper Surveillance
        - Field Surveillance
    - Case Preparation
        - Notices of Violations
        - Abatement Orders
        - Civil-Criminal Actions
- Delegations of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.
- Enforcement of New Source Performance Standards, including preconstruction reviews.
- Enforcement of National Emissions Standards for Hazardous Air Pollutants, including 2-year waivers.
- Citizens complaints.

- Variances when in the form of compliance schedules.
- Support of States' Enforcement Programs.
- Performing or monitoring source testing.
- Monitoring of ambient air quality for enforcement.

These functions are more extensive than those covered by the Management-by-Objective outputs.

In FY 74, 229 positions were programmed for regional air enforcement activities. In FY 75, the regions were allotted 309 positions, and chose to program 298, including for the first time about 30 positions for Mobile Source Enforcement. Headquarters (DSSE) has 46 positions. A number of contracts funded by DSSE provide the regions the equivalent of an additional 41 man years of technical expertise (see Table 12.).

TABLE 12

DIVISION OF STATIONARY SOURCE ENFORCEMENT
REGIONAL CONTRACTS SUMMARY
(INCLUDING PROJECTED)

REGION	COST	EQUIVALENT MAN-YEARS
I	$213,500	4 1/4
II	327,500	6 1/2
III	181,000	3 3/4
IV	260,000	5 1/4
V	518,250	10
VI	154,250	3
VII	82,500	1 1/2
VIII	193,000	3 1/4
IX	87,250	1 3/4
X	75,000	1 1/2
TOTAL	$2,081,250	40 3/4

(Source - DSSE)

These contracts have been used to perform the following functions: evaluation of source compliance, installation of State enforcement management systems, case preparation, evaluation of compliance schedules, technical assistance, support in Section 110(f) hearings, beryllium monitoring, evaluation of power plant controlability, source testing and special analysis, and expert witnesses. In addition to

DSSE funds, OAQPS has spent about $30,000 a year supporting compliance schedule development and installation of enforcement management systems.

Problems And Recommendations/Resources

In assessing the resources needs for each region, the Review Group made the basic assumption that each region should have the minimum level of resources needed to perform adequately the functions for which they are responsible. Thus all regions should, for example, be able to undertake enforcement actions and field surveillance. Staffing for program contingencies, however, received limited emphasis. Several additional assumptions were made:

- EPA will not declare a period of Federally assumed enforcement in any State -- that is, it will not enter into any state to a greater degree than its present involvement in such states as Indiana, Utah, and Louisiana.

- Headquarters contract money will continue to be available in reasonable amounts for special problems in the regions.

- States will legally be able to continue to lead in source compliance activities after mid-1975.

- EPA will attempt to avoid a large number of resource-intensive court cases.

Overall Regional Needs

Resource needs are estimated in Table 13, given the above assumptions and generally tight resources. Additional resources are recommended only where the Review Group believes they will be effectively utilized. They are considered to be the minimum necessary to retain program integrity.

5.1 -- The Review Group Recommends that OPM attempt to provide at least, 13 additional positions for regional stationary source enforcement programs. They should be allocated as specified in Table B.

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Table 13
Recommended Increases in Regional Stationary Source Enforcement Positions

REGION	MINIMAL INCREASE
I	2
II	1
III	-
IV	2
V	5
VI	3
VII	-
VIII	-
IX	-
X	-

The Review Group agrees completely with the Regions (and States and localities) that they cannot be expected to adequately implement additional programs on their basic allocations. The regions complained that, in the past, additional programs -- for example, indirect sources--were imposed upon them with no consideration for the resources required to implement them. Resources requirements must be a major consideration before additional programs are put into effect by the Agency.

5. 2--The Review Group recommends that, as a first step, the Office of Resources Management be included at an early stage in the review of proposed standards, regulations, and SIP promulgations so that resource requirements can be considered, both in development of the SIP and in implementation planning.

The recommendations made in other sections of this report will generally result in only minimal increases in resources or even in savings. The recommendations which might cause some resource increases include:

- Acknowledging of Section 114 letter responses from sources.
- Giving greater attention to State programs for reviewing new sources.
- Upgrading CDS and NEDS.
- Holding working level meetings and exchanges.
- Increasing contacts with the State and local agencies.

These last three, while seeming to cause a direct increase in effort, should, in fact, result in a more efficient program and therefore not actually require more resources. The recommendations that would reduce enforcement resource requirements include:

- The reduction suggested in Headquarters requests for information and special reports from the regions.
- Fuller and more effective utilization of the regions' S&A Division resources.
- More effective use of grants to encourage the States and localities to undertake an even greater share of the enforcement activity.

Region-by-Region Needs

Region I. Region I was in the process of completing its inventory and reviewing the status of source compliance; hence, the additional workload the region will face in the coming year cannot be accurately measured. The Review Team concludes that, given the present program level, the stationary source enforcment effort is undermanned. The best estimate of the minimum additional resources necessary is two or three positions. The increase is required in both the technical and legal functions.

Region II. Region II's major resource concern is to obtain more State and local program resources. The Review Group's recommendation is the addition of one lawyer. An additional lawyer, however, would be of value only if the region adopted a more aggressive enforcement strategy.

Region III. No additional resources are needed, assuming allotted Surveillance and Analysis Division personnel are fully utilized.

Region IV. At the time of the Review Group's visit, Region IV had only one lawyer assigned to stationary source enforcement. Two additional positions, including one lawyer , are the minimal increase necessary to do an adequate job of enforcement. Additional resources for air compliance are not a concern to the region, but they will be necessary to support enforcement actions.

Region V. Region V has the most acute resource resource problem of the 10 regions. The region has found it necessary to assign five of its allocated stationary air enforcement positions to water program activities. The Review Group recommends that at a minimum, five positions be added to the regions personnel ceiling. This increase would be effectively utilized.

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Region VI. The minimal increase recommended for Region VI is three positions. These, however, might be obtainable from internal reprogramming (an option that was not known to the region's Enforcement Division Director).

Region VII. Lack of agressiveness is the primary weakness in the present air enforcement program. Additional resources would not be effectively utilized and were not asked by the region itself.

Region VIII, Region IX, Region X. The Review Group believes that no additional resources are necessary for these regions to conduct the basic stationary source compliance program.

Inter-regional resource comparisons must take into account more than just the air program. In FY 74 some regions (X, for example) consciously built up their air compliance capability by reprogramming from other areas. Other regions (such as VI) have not made the extra effort to reprogram internally. The former should not be penalized to help the latter.

There have, nevertheless, been misallocations from Headquarters.

5.3 The Review Group recommends that the Office of Resource Management develop a model for inter-regional resource requirements and apply it to FY 76 budget allocations.

Other Observations

Based on interviews and other information provided by the regions, the Review Group has formed a number of general conclusions on the regions's use of enforcement resources:

- Stationary source enforcement continues to suffer from the diversion of manpower to new air programs that are forced on the regions without adequate funding. These programs usually have high visibility compared to stationary souce enforcement, causing Regional Administrators to focus resources on them often at the expense of stationary enforcement. Examples include:
  - In Region I, the effort to develop compliance schedules in FY 74 was hampered by the commitment of the Air Branch to do fuel variances and TCP's.

-- In Region III, the key branch for implementing the stationary source enforcement program, had on paper a FY 74 staff allocation of 10; it was staffed by only one person for the majority of the year because the region was devoting its attention to TCP's.

-- In Region V, the key section dealing with stationary source enforcement was in effect reduced by about 20% from FY 74 in order to fulfill the needs of the mobil source enforcement program.

o Historically, many enforcement responsibilities were assigned to the Air and Water Divisions in the regions. These functions have been increasingly transferred to totally enforcement-related groups, which has increased the ability to operate a coordinated program. The increased responsibilties given to air enforcement branches generally have not been matched by increased resources.

o The 69-position increase from FY 74 to FY 75 for regional air enforcement often reflected a pre-existing situation. Few people actually changed jobs or were brought on board.

o Regions are beginning to modify their mix of professionals. The use of a paraprofessionals is just beginning -- Region VII, for example, is beginning to use a paraprofessionals for data processing requring no professional technical skills. Further, the key shortage observed by the Review Group in most regions is in the area of legal skills. A number of regions had only one or two lawyers on board. In most cases this is being corrected.

o About 20% of the stationary source enforcement resources has been going into the S&A Divisions. Yet the work that these divisions have been performing in support of the program has often been minimal. Part of this is due to lack of training in air. (Region VII enforcement personnel are training S&A personnel to conduct inspections; Region III's S&A Division spent its air time last year training its water personnel to do air work.)

o The regions are not reducing staff assigned to enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAP). The Review Group has expected that they would because responsibility for this program is expected to be delegated to the States, and most hazardous sources are in compliance or on waivers.

- Some regions' ability to absorb contract help is reaching its limit. DSSE uses contract personnel extensively to supplement Government personnel on specific tasks or in handling specific relatively short-range problems. The Review Group endorses this approach. However, the regions must have the personnel to monitor and manage contracts to effectively use them.

OAQPS Index of Comparative Workload

While it is not possible to develop an accurate measure, in absolute terms, of regional air enforcement workload (leading to determination of resource needs), a method does exist to measure the comparative workload faced by regions. OAQPS's calculates an index of comparative workload by States based on population, the number of priority I Air Quality Control Regions, capital expenditures for new manufacturing equipment, and the number of motor vehicle registrations. Table 14 aggregates the State indices by regions.

Table 14
Regional Workload Index

Region I	6.6%
Region II	13.0%
Region III	11.5%
Region IV	15.1%
Region V	22.4%
Region VI	9.3%
Regiov VII	5.2%
Region VIII	2.5%
Region IX	10.1%
Region X	3.9%

SOURCE: OAQPS's index of Comparative Workload

The numbers do not consider other factors in regional workload --for example, the difference in effectiveness of State and local agencies and the base level of people required to do the job. Nevertheless, the indices do provide a rough guide to the allocation of manpower among regions. Table 15 shows the regional air enforcement ceiling allocations, as distributed by region in EPA's MBO FY 75 Operating Guidance of Feb. 25, 1974. The 309 positions are also distributed by region based on the indices. This distribution, except for in Region I, generally corroborates the Review Group's recommendations as to where additional resources are needed. Also, included in the table are the

TABLE 15

REGIONAL DISTRIBUTION OF AIR ENFORCEMENT POSITIONS

	Total All Regions	REGIONS									
		I	II	III	IV	V	VI	VII	VIII	IX	X
FY 1975 air enforcement positions approved in Feb. 1974 MBO Guidance	309	24	36	34	35	51	24	22	19	42	22
FY 1975 air enforcement positions (total 309) distributed by workload index	309	21	40	36	47	69	29	16	8	31	12
FY 1975 air enforcement positions included in Regions program plans	298	23	32	31	35	46	24	22	19	42	24

air enforcement positions included in the regions' FY 75 program plan.

§105 AIR POLLUTION CONTROL AGENCY GRANTS

Under the authority of §105 of the Clean Air Act, EPA gives grants to those State and local air pollution control agencies with substantial responsibility for carrying out the provisions of the SIP's. Because they are meant to supplement, not supplant, State and local funds, grants are limited by law to 60% of the total costs of maintaining a program. The thrust of control agency grants has moved from gneral support of air pollution agencies to support of activities leading to attainment of the SIP's. Regional offices have been instructed to tie grant funds to priority outputs such as achieving source compliance.

Regional offices were also instructed to evaluate each grantee's performance. The valuations are to be used as a basis for making future grants, or for withholding portions if a grantee fails in his commitments. Thus, grants can now be utilized as a direct tool for EPA's air compliance program. Grants are in themselves worthwhile in EPA's air compliance program, but their value is greatly enhanced if they are utilized explicitly to encourage recipients to adopt an aggressive, enforcement-oriented approach to air pollution control.

Regional Use of Grants

Regional Offices vary in the types of commitments they ask of States, and in the portion of the total grant tied to these commitments. For example, 6% of Region I's grant to Maine was tied to incentives, compared to 90% of Region IX's grant to Los Angeles. The percentage tied to commitments reflected the regions' views as to what was necessary to elicit action by the recipient.

The theory of attaching conditions to control agency grants was generally well accepted by regional offices this year. Most States, of course, have a different view. In the grants studied by the Review Group, conditions varied from the performance of the basic duties required in 40 CFR to most all of the agency's annual program. One region however, stated that it did not want to impose strict grant conditions because it expected that States would respond by telling EPA to take its program and do it itself.

Most regions at least paid lip service to the idea of actually withholding grant funds for nonperformance. Many grants, however, did not have specific amounts of money tied to specific achievements. This lack of specificity would make withholding of money for nonperformance difficult. EPA's general interim grant regulations appear to allow EPA to withhold funds from the grantee for noncompliance with requirements of the grant. Those regions which had relied on the general clause indicated concern over their ability to prove noncompliance and document costs in case they were to attempt to withhold "proportional" money from the States.

For example, the initial condition in each Region VII grant reads, "Federal grant funds in this award may be withdrawn from the grantee's account in an amount proportional to any Environmental Protection Agency activities necessary to enforce the State's Implementation Plan in the grantee's area of jurisdiction". The method of calculating this proportional amount is not mentioned.

The Review Group tried to determine just how far each region would go in withholding money from grantees that did not fulfill the output commitments of their grant. While some regions indicated that they would withhold money, the Review Group generally concluded that most EPA regions would withhold money only for a vey major grievance. Further, some Regional Administrator signed off on grants without being explicitly aware of the conditions imposed by the grants. As mentioned in Chapter VI, the Regional Administrator must be directly involved in development of grant conditions.

5.4--The Review Group recommends that grants to all States and localities be specifically conditioned by both the time by which specific tasks are to be performed and the amount to be withheld for nonperformance.

In this way both the grantee and the grantor will jointly be able to determine satisfactory or unsatisfactory performance. The Regional Administrator will then have the specific option to withhold funds from a Stae. Recognizing the differences among State and local programs in each region, the Review Group does not recommend any specific policy on the extent to which grants should be constrained.

5.5--The Review Group recommends that OAQPS reiterate and explicity inform the Regions that it is EPA policy to use grants to achieve Agency goals and that Regions are expected not only to constrain their grants but to withhold payment where recipients do not meet grant conditions.

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Decisions on which conditions to put into grants are made in various ways. The most effective method is to involve all divisions concerned with the grant conditions. In some regions, grant conditions are developed by only one division with no output from other programs, resulting in a narrow view of that State program.

5.6--The Review Group recommends that the Regional Administrator assure that the Surveillance and Analysis Division, the Enforcement Division, and the Air Division all have input to the conditioning of grants and in decisions withholding payments for nonperformance.

Management of Grant Funds

The mechanism for funding EPA's air program grants is partly based on a forward funding concept, meaning that a region uses funds from fiscal year one to fund State or local programs in fiscal year two. The regions are using funds from both year one and year two to fund the State program in year two. The Review Group found that regions I, III, and VI were providing the grantees with more grant money to be spent each year than the constant level of funding the region was receiving each year for grants. Each year these regions used more of the second year money to fund the second year's program, thus reducing the amount of money available for year three. Table 16 illustrates the situation and its consequences. The consequences are that the region eventually runs out of forward funds (assuming constant grant allocations to the region).

When this happens, the region will find that is current year funds are inadequate to cover the money the grantees are expecting from EPA, and the region will be forced to cut the amount by which it is supporting the grantees. In the example in Table 16, the region would have to cut its grants by 33%.

One of EPA's regions will have to cut its grants by about 20% in FY 77 unless its policies change or its grant funds are increased. This type of grant funds management is not illegal; however, it represents extremely poor management.

5.7--The Review Group recommends that OAQPS evaluate alternative policies for handling the situation arising from overallocation of forward funding, and provide the regions involved with explicit guidance on how to deal with it.

There are several possible reasons why this situation has been allowed to continue: it is very difficult to track it under EPA's tracking system for grants; historically, when grants were constantly growing, a region could get away with it; and, if properly used, the flexibility provided by forward funding could be advantageous.

Table 16

Hypothetical Example of How Grant Funds are Being Managed in Several Regions Showing How Forward Funding is Being Dissipated and the Consequences.

ASSUMPTION: EPA received authority to give State A $4 million a year in grants using forward funding as necessary.

Year	$ State A has to Spend	Source of Funds	Comments
0	0	--	EPA received initial allocation of $4 million to be used in grants; gives none to State for use in year 0. EPA finishes year o with $4 million for foward funding to year 1.
1	6,000,000	4,000,000 forward-funded from year 0 2,000,000 current funds from year 1	EPA finishes year 1 with $2 million for forward funding to year 2.
2	6,000,000	2,000,000 forward funds from year 1 4,000,000 current funds from year 2	EPA finishes year 2 with zero dollars to forward fund to year 3.
3	4,000,000	4,000,000 current funds from year 3	STATE HAS LESS EPA GRANTS MONEY TO SPEND EACH YEAR.
4	4,000,000	4,000,000 current funds from year 4	

The problem is that given a constant funding situation, there is a limit to which the flexibility can be used to increase the flow of funds to grant recipients. At some point the flow must be decreased to the level that can be maintained. The regions should be encouraged to immediately initiate resolution of this problem on their own.

VI. HEADQUARTERS/REGION/STATE/LOCAL INTERACTIONS

Achievement of the goals of the Clean Air Act is the joint responsibility of the EPA Headquarters, the EPA regions, State agencies, and local agencies. Progress towards the goals can be smooth if the four levels work together, or torturous if they are pulling in different directions. Problems in achieving the goals can develop from disagreement on how to achieve the goals, lack of communication on tactics, and disagreement on the time frame for achievement. These problems are present to a greater or lesser degree throughout the various levels of the air compliance effort.

HEADQUARTERS PROBLEMS

Information Distribution

The distribution of information by Headquarters was repeatedly described by the regions as inadequate. The items most frequently referred to as having distribution problems were opinions by the Office of General Counsel (OGC), policy decisions by the Division of Stationary Source Enforcement (DSSE), and papers by the Office of Air Quality Planning and Standards (OAQPS).

There are two general problems with distribution. One is that the document never gets out of Headquarters; the other is that it gets out, but not to all the "customers" who could use it.

Effective distribution within a region is generally a function of the skill of the Regional Administrator's correspondence control and the degree of interchanges among divisions. Headquarters often sends copies of documents to both the Regional Administrator and the division or branch concerned. This solves some problems, but may leave interested parties unaware that a decision has been made, or that further information is available.

One of the most common complaints of regional attorneys interviewed by the Review Group dealt with their lack of access to OGC legal memoranda and DSSE policy decisions. They also complained of not receiving copies of court decisions with accompanying OGC synopses. The Review Group was also told of instances where regional attorneys had recommended that certain actions be taken only to find out later on that OGC had, in a written memorandum, taken a dim view of the legal support for such actions.

Although it is recognized that a problem area encountered by a regional attorney can, in most instances, be quickly resolved by a telphone call to OGC or DSSE, in many instances, the real issue is determining if a problem exists. To make such assessments, the Review Group believes that regional attorneys should be supplied with a full complement of legal tools.

6.1--The Review Group recommends OGC/DSSE develop a legal memoranda case index on a category-by-category basis and that this index, with copies of all listed memoranda and cases, be circulated to the regions. Thereafter, this index should be updated every two months and recirculated to the regions with copies of newly developed memoranda and court opinions.

DSSE must ensure that once a policy decision has been reached, it is effectively distributed to the regions. The routine, centralized listing of what new legal material is available and what issues have been decided would be of benefit to the regional programs.

6.2--The Review Group recommends continuance, at least a bi-monthly basis, of DSSE's newsletter, which summarizes policy decisions and distributes regional findings.

OAQPS effectively disseminates its guidelines series to personnel in regional air programs. Unfortunately, those in regional Air Enforcement Divisions -- and occasionally in Surveillance and Analysis Divisions -- often have difficulty seeing or learning about papers they could use. Obviously, this is primarily an intra-regional office distribution problem, but OAQPS could provide assistance.

6.3-- The Review Group recommends that OAQPS ensure that regional Enforcement Divisions are kept informed on enforcement related issues dealt with in OAQPS's Guideline Series.

Legal and Technical Expertise

Regional Offices in need of extra assistance on specific cases should tap Headquarters legal and technical expertise. Most regions indicated that assistance was generally provided when requested, but not always of the desired quality. Regions III, IV, and V showed the Review Group an excellent example of joint use of expertise on the steel industry.

6.4--The Review Group recommends that DSSE and OAQPS jointly develop and distribute a list of experts available as witnesses or for compliance purposes. Continuing liaisons should be provided so the regions can obtain technical experts as they are needed.

Experts should be identified as to their field and availability. Contractors should be included where appropriate. Too often, assistance provided to the regions depends entirely on someone knowing the right person to call. The situtation becomes much more difficult as the mid-75 deadline approaches.

DSSE has indicated that its attorney-advisors may be made available to the regions to work on specific cases. Every effort should be made to fully utilize Headquarters resources to service the regions with the most immediate problems. Headquarters personnel would also gain experience in actual case work.

6.5--The Review Group recommends that the regions utilize the legal and technical expertise that DSSE has indicated may be available.

The Denver National Field Investigation Center (NFIC) is independently developing certain specialities and expertise in air programs. This development should not be unilateral but rather a part of a clear strategy from OEGC elaborating the NFIC's responsibilities and duties.

6.6--The Review Group recommends that OEGC assure itself that the development of an air capability by the Denver NFIC is a coordinated part of a clear OEGC strategy elaborating the NFIC's responsibilities and duties.

Policy Changes

As Headquarters continuously updates guidance on air compliance, it must fit those policy updates into the Formal Planning and Reporting System. New policies must be fitted into the existing program. Too often, regions are told to implement a new policy without an explanation of why that particular option was chosen and how it fits in with the rest of the program priorities. The regions are then left to justify the new policy to their States and localities without being properly able to support it. Further, the regions are generally given no clear guidance on what current commitments can be reduced in order to make resources available for the new policy. Planning for major changes in policy that require increased resources should consider where resources will come from.

Concurrence

EPA Order 1260.41 requires that the Regional Administrator or his delegate obtain advance Headquarters concurrences prior to issuing notices of violation and administrative orders or refering civil and criminal action to the United States Attorney's Office. The Order also states that the Assistant Administrator for Enforcement and General Counsel may waive the concurrence requirements on a selected regional basis. The avowed purpose for the concurrence requirement is to assure that in initiating and operating the regional stationary source enforcement program, all major factors are considered prior to taking an enforcement action, as well as to maintain a uniform and consistent national enforcement program. With region stationary source enforcement programs well on their way, the concurrence requirement for notices of violation has been waived for all regions. In addition, a conditional waiver of the concurrence requirement for orders has been issued to Regions I, III, IV, V, VII, and IX (as of November 23). This conditional waiver, which should be extended to all regions by the early part of 1975, requires the regions to notify DSSE of their plans to issue orders. If the order involves a steel mill, power plant, smelter, an interpretation of an EPA regulation, or an issue of national significance, DSSE can either request a copy of the draft order or an entire concurrence package. The Regional Office can issue all other routine orders after notifying DSSE. This policy of conditional waivers on all but the important issues indicates insufficient guidance from DSSE. In any case, the term "issues of national significance" is too vague.

6.7--The Review Group recommends that DSSE issue complete policy guidance on orders for steel mills, power plants, smelters, and other areas of national significance, then issue complete waivers of concurrence permitting the regions to issue all orders after notifying DSSE.

Concurrence packages are still required for all civil and criminal actions. This requirement will probably not be changed in the foreseeable future since these actions generally involve issues of national significance, and since the Assistant Administrator for Enforcement and General Counsel's Office acts as liaison with the Department of Justice and will routinely play a major role in any decisions made in a case.

Industry Relationships

Headquarters can undercut the regions when it speaks directly to industry or to the States. Obviously there should be a balance. EPA Headquarters generally has a very good reputation for being careful with its contacts "outside the chain of command". Industry naturally likes to select the most convenient alternative, and any unnecessary leniency can quickly be used to produce leverage at other levels.

6.8--The Review Group recommends that the Office of Enforcement and General Counsel and the Office of Air and Waste Management use extreme caution in direct contacts with industry and make every effort to invite, or at the minimum inform the affected regions when any meetings take place.

Management Attitudes Towards Air Data

All alumnae of the Vietnam era are familiar with the problems of management by "body count". Quality versus quantity should always be a concern. §113 orders can merely rubber stamp a State variance running beyond mid-1975 or can represent a tough agreement hammered out after considerable time and effort. An inspection can be made from a passing car, or it can be a full-fledged stack test requiring 10-15 man-days. If Headquarters wants high numbers, it will get them.

Management attitude towards air data must continually consider the whole picture, and not separate bits of information. Commitments made or missed must be evaluated in light of all other actions, and from an understanding of changing pressures and special demands. Regions must understand that they will be evaluated in this light.

Rumor

Difficulties arise in Headquarters-Regional contact while policy is being formulated. Every person in every region seems to have his favorite contact in Headquarters. Everybody calls someone different and gets a somewhat different opinion. The occasional lack of response to formal request during times of policy formulation leads to more reliance on rumor and "best guess". Efforts must be made to curtail this practice . In several instances, rumors have resulted in erroneous information given to the States, seriously impacting an enforcement case and EPA-State relations. OAQPS and DSSE must make every effort to inform the regions early and often in the policy-making process.

REGIONAL PROBLEMS

Grants

A central theme of the air compliance program is getting the States into an active "enforcement posture". In influencing the States, nothing can substitute for having the Regional Administrator (RA) push the program. Almost every RA is personally involved in conferences with the States on Water §106 grants, but too many RA's leave the Air §105 grant negotiations to lower level personnel. It is critical for each RA to have a working knowledge and relationship with each State air program director and his program. Time and effort invested working on air program grant outputs with the States will be more than repaid in the RA's increased ability to coordinate the States' efforts to complement the regions's actions. Region X has been following up a face-to-face §105 grant meetings with quarterly meetings between the RA and two States at a time to discuss progress towards achievement of specific goals.

6.9--The Review Group recommends that each Regional Administrator should become personally involved in §105 Air Pollution Control Agency Grant negotiations with the States and should chair regular meetings to review compliance status and plan EPA/State enforcement efforts.

The Compliance Data System (CDS) should be utilized as the vehicle to summarize the compliance information for the major point source facilities so that this review session is manageable. This procedure will also allow the region to follow-up on overdue actions in CDS on a regular basis. The continuing confusion over reporting is one of the central stumbling blocks to improving EPA/State relations.

Organizational Techniques

If the States are to fully be a part of the national air compliance effort, there must be effective and timely communication between the regions and the States. Region X is continuing its experiment with State Operations Offices by adding one Air Operations Officer to each State office this year. Their specific job will be to assure the rapid update of all compliance data and in general act as a liaison between the region with the State on the Air Compliance Program. Region VI has gone a somewhat different route in assigning one person in the Regional Administrator's office to be a state specialist. His job is to guide the regions actions with one State through a difficult period. Region VIII has also assigned a coordinator to one difficult State.

The Region X experiment, with one air professional in each State, looked very promising to the review group. Although this will be a demanding task, his job can and should be done. Extra steps will have to be taken by every region to focus on its relationships with the States, and each region should find its own way. The point is in too many regions, the relationships with the States ranged from stagnant to terrible. Major efforts must be made to improve them. In one region, the relations got so bad at one point that no one in the regional office except the Regional Administrator was allowed to talk to State personnel. Each region must determine its own optimum structure for its own problems.

6.10--The Review Group recommends that every Regional Administrator consider where special State coordinators could improve EPA/State relations.

Working Level Meeting

The regions identified for the review group numerous tactical approaches that they were trying or had learned from experience. They believe, and the review group concurs, that meetings of working level regional enforcement personnel would allow the regions to share their experience, thereby, increasing total efficiency.

6.11--The-Review Group recommends periodic meetings of working level regional enforcement personnel.

Non-SIP Related Problems

EPA has three non-SIP related programs that are now the responsibility of stationary source enforcement and that we are trying to delegate to the States (localities). These are New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Pollution (NESHAPS), and Indirect Source Reviews. To date none of these programs have been delegated to any State. Some States have asked for these delegations and in other cases States have agreed to perform the technical review leaving it up to EPA to issue the final decision or take enforcement action. EPA's policy is to delegate these programs wherever and whenever possible.

The review group found that there are various problems involved in delegation. For example, in Region V, there is apparently a resistance by States to assume delegations for two reasons: 1) the increased resource burden it will put on the State without any increased resources coming from EPA and 2) a resistance on the part of the States to operating in the regulatory enforcement mode required by the regulations. Guidance from headquarters would be of very little help in attempting to resolve these problems.

On the other hand, in Region IV one finds that reluctance to accept delegaton rests on confusion as to what is involved. The State of Georgia said their acceptance of delegation was awaiting a memo changing the guidance for delegations. Where the problem is similar to Georgia's, improved guidance from headquarters would help to increase the number of delegations. There is significant confusion in the regions in the area of delegations.

The Review Group recognizes that "delegation" is not an end in itself. EPA may significantly and unnecessarily alienate many States by behaving as if it were assumed that a State has no choice about "delegations". In fact, the Clean Air Act does not require acceptance of a "delegation". It would be desirable if the acceptance was voluntary, and the number of voluntary acceptances will increase only if EPA demonstrates that the delegation is in the State's best interest.

6.12--The Review Group recommends that DSSE issue a composite set of up-to-date guidelines on delegation of enforcement responsibilities. This should address legal, technical, and program aspects.

6.13--In addition, the Review Group recommends that the regions concentrate their efforts on those States most likely to accept delegations, and use them as demonstrations to the borderline States to show them that the delegations can be accepted without creating problems.

In genral, States are unwilling to accept delegation of enforcement of demolition regulation under NESHAPS. These regulations are not being fully enforced.

STATE AND LOCAL PROBLEMS

Program Planning

States concerns often differ from EPA's. They are more attentive to citizen complaints; they enforce more against odor and visible violations; some areas have lead regulations, others are working on arsenic standards. Most States are not as sensitive to the demand of the Clean Air Act's deadlines as is EPA. Therefore, the States are not necessarily interested in our priorities. We have several ways to make them interested: legal and economic sanctions, logic and persuasion.

All the efforts to get States "tuned-in" to EPA priorities can be voided by eccentric Headquarters actions. Many States pointed out their problems with following the twistings of EPA policy, especially when they first read about our policies in the newspapers. The Management-by-Objectives (MBO) system has been generally well accepted in EPA's regions because of the relative stability it provides

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the programs. In most regions the §105 grant process focuses on specific outputs. In order to extend the MBO system fully to the States, two things are needed: one is that the States have to see EPA's Regional Guidance; many States have not seen the FY 75 Regional Guidance. Secondly, the States have to have an input into the formulation of the guidance package, just as the regions did for the first time this year. Only by involving the States in our planning can we involve them in our outputs and goals.

6.14--The Review Group recommends that arrangements be made to involve the States along with the regions in the MBO planning process.

Interaction with States on Court Cases

In the State of Georgia, the review group was told that EPA's Office of General Counsel does not involve States in legal disputes of interest to them. The specific case under discussion was the challenge to the tall stacks provision of the Georgia State Implementation Plan. Georgia learned of this suit only after it was too late for the State to intervene. Georgia also objected to the fact that the brief filed in the suit did not show, in their view, an adequate understanding of the State Implementation Plan regulations. While the suit in question involved a challenge of EPA's approval of the State regulations, the loss of the suit required the State to revise its regulations.

This type of problem came up in other cases. In at least one other case the State complained that EPA's defense of a challenge did not adequately reflect the situtation, and the State was given no chance to comment on the brief. This, of course, may partly be due to the fact that EPA itself does not have the final authority in the briefs.

6.15--The Review Group recommends that EPA, as a matter of formal policy, notify States when a suit involving them has been filed, even if the suit is only a challenge of EPA action.

This notification should of course be the responsibility of the Regional Office and will require that the General Counsel's office notify the Regional Counsel's office of all suits.

Both in the State of Pennsylvania and in Allegheny County the review group was informed of an unwillingness on EPA's part to get involved in helping the State defend challenges to its SIP regulations, either from the legal or technical viewpoint. From the legal side, the unwillingness apparently rests on a fear that if the case is lost and EPA was involved, then EPA's attempt to challenge or litigate the matter in another case will be hampered. The Review Group has been told that the basis for the unwillingness of EPA to testify is unfounded.

6.16--The Review Group recommends that the General Counsel's office as well as OAWM should review the issue of EPA involvement in EPA court challenges to SIP's and recommend policy. The Review Group also recommends that EPA assist States and locals in these cases wherever possible, resources permitting.

APPENDIX I

List of Recommendations

The recommendations contained in this report are listed below. They are grouped by organizational responsibility and ordered by approximate priority within groups.

The Review Group recommends that the Administrator should:

- Request appropriate legislation to allow extension of final attainment dates for State Implementation Plans in those Air Quality Control Regions where TSP National Ambient Air Quality Standards will not be met and presently available controls strategies would be socially or economically unacceptable. (3.5)
- Continue to advocate passage of the necessary legislation allowing States to prepare compliance schedules for EPA approval and promulgation in the Federal Register for sources with post-mid-1975 final compliance dates. (4.19)
- Continue to request an Amendment to s113(b) of the Clean Air Act to provide for civil penalties so, if deemed appropriate a source can suffer penalties for delaying in a civil proceeding. (4.48)

The Review Group recommends that each Regional Administrator should:

- Become personally involved in § 105 Air Pollution Control Agency Grant negotiations with the States and should chair regular meetings to review compliance status and plan EPA/State/local enforcement efforts. (6.9)
- Direct his enforcement personnel to: 1) conduct more source inspections and visit State and local agency offices more frequently and 2) to fully utilize (CDS) as an enforcement management tool. (4.23)
- Assure that the Surveillance and Analysis Division, the Enforcement Division, and the Air Division have input to the conditioning of § 105 Air Pollution Control Agency grants and in decisions on withholding payments for nonperformance. (5.6)

- o Delegate the authority to sign § 114 letters and § 113 notices of violation to the Enforcement Division Director. (4.45)
- o Request that his region have, at the very least, co-project officer status on any EPA contract in its jurisdiction. (4.7)
- o Consider establishing a separate air group in the Surveillance and Analysis Division, and assigning this group clear responsibility for air outputs assigned to the S&A Division. (4.38)
- o Consider where special State coordinators could improve EPA/State relations. (6.10)

The Review Group recommends that each Region should:

- o Specifically condition § 105 air pollution control agency grants to all states and localities by both the time by which specific tasks are to be performed and the amount to be withheld for nonperformance. (5.4)
- o Assign one individual the responsibility for completing compliance schedules for a State and give this individual the responsibility to advise the State on EPA policy on a regular basis. This same individual should also be responsible for following the States compliance monitoring program. (4.12)
- o Negotiate with each of its States a program to complete compliance schedule development. Monthly or quarterly targets should be considered. The results of the negotiation should be a condition on the State program grant. (4.13)
- o Initiate an effort to complete compliance schedules using contract funds available from OEGC if a State remains incapable or un-cooperative in submitting schedules to EPA even after selective EPA enforcement actions. (4.15)
- o Develop, as soon as possible, a specific surveillance program to define those point sources on which field surveillance will be conducted during the remainder of this fiscal year. (4.24)
- o Require their National Emission Data System contacts to have an independent assessment of the completeness and accuracy of the point source emissions data and put, as a region, the effort necessary into maintaining the data base and encouraging the States to improve and update the data. (4.6)

- Include in the compliance monitoring program a review of State programs to evaluate State compliance with SIP new source procedures. The regions' field surveillance program should include surveillance of a selected number of new sources. (4.33)
- Require the NEDS contacts in the region to notify the Enforcement Division when they identify new sources. (4.4)
- Modify their programs to implement CDS to assure that all new point sources of air pollution are included. (4.32)
- Utilize the legal and technical expertise that DSSE has indicated may be made available to the regions. (6.5)
- Include with all § 114 letters a request to update a NEDS printout or to fill out an APER form (if no NEDS data exist). The § 114 letter should clearly state what is requested and what is required. (4.3)
- Put the necessary effort into keeping an up-to-date record of all State Implementation Plans (SIP's) including compliance schedules, modifications, etc. (4.57)
- Review their SIP's to assure that they are internally consistent. (4.56)
- Set aside time each quarter to evaluate, improve, and update its specific State regional enforcement strategies. The strategies should be prioritized to achieve the NAAQS as soon as possible, and to achieve source compliance with the SIP's. States (or localities) should be kept or placed in the lead wherever possible. (4.40)
- Review its compliance strategy for Federal facilities and determine means to: 1) improve the programs focus 2) instill a "sense of urgency" about the approaching compliance deadlines, and 3) bring the skills and powers of EPA enforcement to bear on this problem. (3.8)
- Continously match up CDS and NEDS identification numbers. Regions should develop a formal program to see that source information they receive goes into both data systems as well as EPA's formal planning system. This could be accomplished by

assigning the same person to both CDS and NEDS. (4.5)

- Acknowledge all § 114 replies and inform the source if no further action is intended on the basis of the information supplied. (4.44)
- Concentrate effort on those States most likely to accept New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) delegations, and use them as demonstrations to the borderline States to show them that the delegations can be accepted without creating problems. (6.13)
- Have the Regional Enforcement Division Director and Public Affairs Officer update at least quarterly the publicity strategy for air compliance. (4.52)
- Assign a single coordinator who will devote as much time (full-time in most regions) as necessary to the implementation of CDS. (4.27)
- Require States to notify individually all sources on categorical compliance schedules unless the source has complied with the first increment of progress -- that is, it has reported. (4.14)
- Use their leverage with the Office of Regional Liaison, the Program Reporting Division, and the Administrator, if necessary, to reduce demands for "one time only" reporting. (4.29)
- Take the appropriate steps to guarantee that all affected persons are advised of the issuance of a § 114 letter and what is required. Use of a checklist of required steps in issuance of a §114 letter would be appropriate. (4.43)
- Give no greater prior notice of inspections to Federal facilities than they give to private industry. (4.36)
- Conduct whatever inspections and investigations are necessary without giving advance notice (other than perhaps a day before) to the State if the State is uncooperative. If the State is cooperative with EPA in thise actions it would be appropriate to extend more advance notice so that State personnel can accompany EPA personnel if they want to. (4.35)
- Require that a plant inspection be an integral part of every enforcement action. (4.42)

The Review Group recommends that the Division of Stationary Source Enforcement should:

- Develop a consistent national strategy for post-1975 State compliance schedules. (4.17)
  - Before finalizing an interim or final enforcement policy, EPA should inform all the States of the legal problems with post mid-1975 schedules and consult them on the alternatives. (4.18)
  - In the interim, before passage of recommended legislation, EPA should adopt a policy of overseeing State enforcement orders. (4.20)
  - OEGC should examine the question of citizen participation in § 113 conferences and give thought to providing interested citizens an opportunity to testify if they so request in writing beforehand. Accordingly, notice should be given of all compliance schedules in at least one local newspaper. (4.21)
  - Guidelines should be developed informing the public of how decisions are made under § 113 and an operating standard should be set which will enable the results of a § 113 proceeding to weather subsequent court challenge. (4.22)
- Ensure that all regions and States follow the same understanding for developing their list of "potentials" 100 ton per year point sources and that the FY 76 defintion be specific enough to allow standardization. (3.1)
- Provide the regions with guidance on equpment delays. This guidance should include suggested policy on (1) when a schedule should be revised, (2) what requirement a source should be compelled to meet to document an equipment delay, (3) when a source should be singled out to be pressured to obtain control equipment in an expeditious manner even if this causes some increase in cost, and (4) how to assure that all compliance schedules currently being developed include consideration of equipment delays. (4.31)
- Jointly with OAQPS, develop and distribute a list of experts available as witnesses for compliance purposes. Continuing liaison should be provided so the regions can obtain technical experts as they are needed. (6.4)

- Assign to the regional offices sole responsibility for the quality and timelines of their Federal Register packages. Headquarters review should be limited to matters of policy and major substantive issues. Headquarters should consult the regions before making changes. Headquarters should be allowed only a specified period of time (for example, 5 working days) to complete its review. (4.16)

- Issue complete waivers of concurrence on all enforcement orders, thus permitting the regions to issue orders after notifying DSSE. This will require that DSSE issue complete policy guidance on orders for steel mills, power plants, smelters, etc. (6.7)

- Provide the regions with guidance on dealing with problems of dual interpretation of SIP regulations. The guidance should encourage the Regional air programs to seek clarification of the SIP as rapidly as possible and assure that clarification does not endanger achievement of NAAQS. (4.55)

- Make every effort to persuade the Federal Energy Administration to amend Regulation 215 or to adopt a national policy to alleviate difficulties being experienced in the regions in obtaining source compliance by power stations and commercial/industrial boilers. (4.58)

- Provide the regions with guidance on delegation of enforcement responsibilities for New Source Performance Standards and National emission Standards for Hazardous Air Pollutants. An up-to-date composite set of guidelines is necessary. They should address legal, technical and program aspects. (6.12)

- Update its report on compliance schedule delays and regularly inform the regions as to what is currently considered a generally "expeditious" schedule. (4.30)

- Acquaint the regions with the full potential of CDS and assist them in using it as a full enforcement management system. (4.25)

- Provide additional guidance and direction to the regions to assist them in explaining to the States the functions of CDS, the contributions to the system expected of the States, and the relationship of this system to NEDS. (4.26)

- Review the implication of the Clean Fuels Policy for the enforcement program and, in conjunction with OAQPS and OPM, inform the regions' Enforcement Divisions of their conclusions and the action the regions' Enforcement Divisions are expected to be taking. (4.54)

- Provide the regions with guidance as to enforcement policy for industrial/commercial boilers and 2) area sources such as residential coal burners. (3.6)

- Schedule periodic meetings of working level regional enforcement personnel. (6.11)

- Continue, at least on bi-monthly basis, DSSE's newsletter, which summarizes policy decisions and distributes regional findings. (6.2)

- Review the usefulness of its source inspection manual based upon inputs from the Regions and then modify the manual accordingly. (4.39)

- Monitor requests made by its staff for reporting beyond the Program Planning requirements. This recommendation also applies to OAQPS. On a quarterly basis, each program should reassess its formal reporting requirements to determine where they might be reduced. (14.29)

- Review with the regions the criteria for verifying compliance so that the Guidance can be updated for FY 76. (3.4)

- Request an Amendment to § 305 of the Clean Air Act to give EPA litigation authority. (4.49)

- Provide the regions with guidance on encouraging state and local agencies to enforce against State and municipal sources. (4.41)

- Provide the regions with guidance on style and format of § 113 orders. DSSE should limit its review to policy questions, or waive concurrence entirely. (4.47)

- Specify in the Regional Guidance that "final compliance" be determined by an acceptable manner within one year on a continuous basis. (3.2)

- Reflect in the FY 76 Regional Guidance the need for more than annual source inspections, by the States or localities, for those sources requiring it in Priority I AQCRs. (4.34)

- Distribute a sample checklist for § 113 notices to assure full involvement of the States. (4.46)

- Drop HAPEMS as a separate data system and incorporate it into CDS. (4.2)

The Review Group recommends that the Office of Air Quality Planning and Standards should:

- Reiterate and explicitly inform the Regions that it is

EPA policy to use grants to achieve Agency goals and that Regions are expected not only to constrain their grants but to withhold payment where recipients do not meet grant conditions. (5.5)

- Evaluate alternative policies for handling the situation arising from over use of forward funding, and provide the regions involved with explicit guidance on how to deal with the situation. (5.7)

- Immediately propose a modified definition of a point source in the Federal Register if the larger package of revisions is not ready. (4.8)

- Update 40 CFR 51.7 so that Federal Register and Regional Guidance reporting requirements coincide. (4.28)

- Ensure that regional Enforcement Divisions are kept informed on enforcement-related issues dealt with in OAQPS's Guideline Series. (6.3)

- Aggressively assume responsibility for developing NEDS computer programs needed by all regional offices. (4.9)

- Review the need for individual hard copy source files and recommend to the regional offices whether or not they should be maintained for all sources. (4.10)

- Reconsider getting together with DSSE on a joint contract with "Dodge Reports" in the interest of possible efficiency. (4.11)

The Review Group recommends that the Office of General Counsel hould:

- Develop with DSSE a legal memoranda case index on a category-by-category basis. This index, with copies of all listed memoranda and cases, should be circulated to the regions. Thereafter, this index should be updated every two months and recirculated to the regions with copies of newly developed memoranda and court opinions. (6.1)

- Present with OAWM's assistance all Regional Offices and State and local programs with guidance on chain of custody and standard business procedure. (4.53)

- Initiate a formal policy of notifying (through the regions) the States and localities when a suit involving them has been filed, even if the suit is only a challenge of an EPA action. (6.15)

- o Review with OAWM, and recommend policy on the issue of EPA involvement in court challenges to SIP's where it is the State or local agency that is sued. The Review Group would favor a policy of EPA assisting States and localities in these cases wherever possible, resources permitting. (6.16)

- o Delegate to the Regional Administrators authority to sign credentials for all inspectors. (4.37)

The Review Group recommends that Headquarters Public Affairs Office in conjunction with DSSE, should:

- o Develop alternatives to provide positive feedbacks to industries, where appropriate. (4.57)

The Review Group recommends that the Assistant Administrator for Enforcement and General Counsel should:

- o Use extreme caution in direct contacts with industry and make every effort to invite, or at the minimum inform the affected regions when any meetings take place. This recommendation also applies to OAWM. (6.8)

- o Assure that development of an air capability by the Denver National Field Investigation Center (NFIC) is a coordinated part of a clear OEGC strategy elaborating the NFIC's responsibilities and duties. (6.6)

- o Request the Department of Justice to reconsider initiation of simultaneous civil and criminal actions against a selected source. (4.50)

The Review Group recommends that the Office of Federal Activities should:

- o Determine with the Office of General Counsel if there is legal means for compelling Federal facilities to comply with emissions limits. If this issue remains a problem, EPA should consider recommending appropriate amendments to the Clean Air Act to strengthen the States' authority in this area. (3.7)

- o Finalize its program of action and jointly with OEGC, provide policy guidance to the regional on enforcement against Federal Facilities. (3.9)

The Review Group recommends that the Office of Planning and Management should:

- o Attempt to provide, at least, 13 additional positions for regional stationary source enforcement programs. They should be allocated as specified in Table 13. (5.1)
- o Evaluate in FY 76 through its Management Information and Data Systems Division the data requirements of the enforcement (CDS) and air programs (NEDS) and determine if a single system will be feasible and cost effective. (4.1)
- o Provide guidance (through ORM) to the regions on how to report source compliance at the end of FY 75 if there is not enough time to verify compliance by an acceptable method. (3.3)
- o Make arrangements to involve the States along with the regions in the MBO planning process. (6.14)
- o Include Resources Management at an early stage in the review of proposed standards, regulations, and SIP promulgations so that resource requirements can be considered both in development of the SIP and in implementation planning. (5.2)
- o Develop (in ORM) a model for inter-regional resource requirements, and apply it for FY 76 budget allocation process. (5.3)